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STATE TRIALS

AND

PROCEEDINGS

UPON

High Treason,

AND OTHER

Crimes and Misdemeanors;

FROM

The Reign of King RICHARD II.

TO

The End of the Reign of King GEORGE I.

WITH

An Alphabetical TABLE of the Names of the Persons tried or proceeded against; the Crimes for which they were tried, and the Punishments of such as were convicted.

The NINTH VOLUME.

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N. B. Numb. VI. the Beginning of *June*; and the Beginning of every Month a New Number will be Published. And the Publick may be assured, that this LEARNED WORK will be carried on with all possible Care and Dispatch.



STATE TRIALS.

PROCEEDINGS in Parliament Vol. VI.

against JOHN PLUNKET, GEORGE Page 335,
KELLY, alias JOHNSON, and Dr. &c.

FRANCIS ATTERBURY Bishop of Proceedings a-
Rochester, upon Bills of Pains and Kelly, and Bi-
Penalties, for a treasonable Conspiracy. shop Atterbury.

May, 9 Geo. I. 1723.



Committee of the Commons was appointed to enquire into the Grounds of this Conspiracy on the Fifteenth of *January*, 1722. consisting of the following Members of that House, (*viz.*)

The Right Honourable *Spencer Compton*, Esq; The Secret
Speaker. Committee.

Robert Walpole, Esq; Chancellor of the Exche-
quer.

Sir Joseph Jekyll, Master of the Rolls.

Paul Methuen, Esq; Comptroller of his Ma-
jesty's Household.

William Pulteney, Esq;

John Smith, Esq;

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B

Richard

Proceedings against Bishop Atterbury, &c.

Richard Hampden, Esq;
Lieutenant General Wills, and
Sir Robert Sutton.

Their Report.

That there had
been a Plot.

That three
Times had
been fix'd for
putting the
Plot in Execu-
tion.

The Committee made their Report to the House by *William Pulteney*, Esq; their Chairman, on the First of *March*, 1722. wherein they first observe in general, That a Design had been long carrying on by Persons of Figure and Distinction at home, in Conjunction with Traitors abroad, for placing the Pretender on the Throne; instancing in three particular Times when the same was intended to be put in Execution: 1. That the first Intention was to have procur'd a regular Body of foreign Forces to invade these Kingdoms, at the Time of the late Elections of Members of Parliament, in 1721.

2. That being disappointed in this Expectation, they next resolv'd to make an Attempt, at the Time it was generally believ'd his Majesty intend- ed to go to *Hanover*, (*viz.*) about the Month of *May*, 1722, by the Help of such Officers and Sol- diers, as could pass into *England* unobserv'd from abroad, under the Command of the late Duke of *Ormond*, who was to have landed in the River with a great Quantity of Arms provided in *Spain*: At which Time the *Tower* was likewise to have been seiz'd, and the City of *London* to have been made a Place of Arms.

3. That this Design having been also disap- pointed by Discoveries made in *England*, and his Majesty's putting off his Journey; by the En- campment of the Forces at home, and the sending for those from *Ireland*, and the Readiness of the States to assist his Majesty; by the Orders given in *Spain* to prevent the Duke of *Ormond*'s Em- barkation, and Orders issued in *France* to pre- vent his passing through that Kingdom: The Conspirators resolv'd a third Time to attempt it at the Breaking up of the Camp at home, *viz.* in *October*, 1722. without any foreign Assistance, ha- ving endeavour'd to corrupt and seduce several Officers and Soldiers in his Majesty's Army for that

that End, and seem'd to depend on their Defection.

That these Designs were sufficiently manifested by Advices from almost all Parts of *Europe*, sent by Persons who appear'd to have had no Communication with each other: And these Advices were verified and supported by several Discoveries made at home; by the Informations and Confessions of some of the Persons concern'd, and by a long and regular Series of Correspondence between the Conspirators at home and those in distant Countries. The Chief of the Conspirators at home, they observe, were the Bishop of *Rochester*, the Lord *Orrery*, the Lord *North and Grey*, the Duke of *Norfolk*, and Sir *Harry Goring*. Those in *France* were, the Lord *Marr*, and General *Dillon*; in *Spain* the Duke of *Ormond*, and at *Rome* the Pretender, and the Officers of his Court, Sir *William Ellis*, Mr. *Francis Kennedy*, &c.

Discoveries of it from abroad, and at home.

The principal Conspirators.

That their inferior Agents in *England* were, first, *Christopher Layer*, Esq; who now lies under Sentence of Death for the Conspiracy, and was repriev'd from Time to Time, to see what Discoveries the Government, or the Committee, could draw from him in these Circumstances; that this Gentleman seem'd principally intrusted by the Lords *Orrery*, and *North and Grey*; That *Plunket*, who travell'd to *Rome* with *Layer*, and whose treasonable Practises and Correspondencies were closely connected with those of *Layer*, seem'd to have transacted Part of his Treasons with the Lord *Orrery's* Clerk, and sent frequent Accounts to the Pretender's Agents abroad, of Matters relating to the said Lord; That *George Kelly* appear'd to have been the Person principally intrusted by the Bishop of *Rochester*; and to have been employ'd in writing for him, and conveying Letters to him, until he was taken into Custody; and that then *Thomas Carte* was entrusted and employ'd by the Bishop in the same Manner; and that *George Kelly's* Correspondence had a close Connexion with that of *Dennis Kelly's*;

Their inferior Agents.

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Proceedings against Bishop Atterbury, &c.

and he appear'd also to have been privy to *Plunket's* and *Neynoe's* Transactions; That the Person employ'd by the Duke of *Norfolk* in conveying Letters between him and *George Fernegan*, an Agent of the Pretender's in *Flanders*, they find to be *Mrs. Spelman*, alias *Tallop*, who had likewise owned her Conveying Letters in the same Manner, between *Mr. Harvey* of *Combe*, one *Moor* of *Brownloe-street*, and the said *Fernegan*; and the Committee observe, that *John Sample* acted under the Direction of *Mr. Sempill*, commonly call'd *Lord Sempill*, and his Son at *Paris*; and that he wrote Letters to the Pretender and the Duke of *Ormond*; but they could not discover, on his Examination, with whom he transacted Matters in *England*.

They observe also, That the same treasonable Correspondence was carried on in *Scotland* and *Ireland*; and that in *Scotland* it was managed by *William Ereskin* and *Mr. Cockran*.

Of several of these inferior Agents the Committee thought fit to give some Account.

Characters of
some of the
under Agents.

George Kelly, they observe, was a Non-juring Clergyman, who had, notwithstanding, taken the Oaths in the Reign of *Queen Anne*.

Thomas Carte was also a Non-juring Clergyman.

John Plunket was born at *Dublin*, and bred up in the *Jesuits* College at *Vienna*, a *Roman Catholic*, but not in Orders; That by his Dress and Behaviour he appear'd very inconsiderable, and no Ways equal to the Part he was charg'd with; and yet a great Number of Letters from Persons of the first Quality abroad were found among his Papers, in which the Committee observ'd he was treated with great Intimacy and Confidence.

Philip Neynoe, a Clergyman, also was said to be in the Conspiracy at first, but taken off and employ'd by the Ministry, to discover their Intrigues: However, the Ministers suspecting his Sincerity, he was apprehended, and endeavouring to make his Escape before his Examination was perfected, was drown'd in the *Thames*.

The

The Committee, having given a general Account of the Reasons that induc'd them to believe there was a Conspiracy, (which I pass over here, because they are all contain'd in the following Part of the Report) proceeded first to lay before the House such Particulars of the treasonable Correspondence abovesaid, as related to *Layer* and *Plunkett*: These being closely connected together, and set on Foot earlier than it appears the others were.

The Committee, to avoid Mistakes, propounded their Questions to Mr. *Layer* in Writing, and directed his Answers to be so likewise; and before they were reported to the House, he had the Perusal of them; and on the Review did frequently make Additions and Alterations in them.

Part of the Report relating to *Layer* and *Plunkett*.

He acknowledg'd, That being bred up under an Uncle, who was a Nonjuror in *Norfolk*, he early imbib'd those Principles; That having a private Affair to transact at *Venice*, this, and a natural Curiosity he had to see the Pretender, carried him on to *Rome*; That he set out from *England* on the first of *April*, 1721, in Company with *John Plunket*, now in Custody, who sometimes went by the Name of *Rogers*, whose Expences he bore, on Account of his being useful to him, as speaking several Languages; That he believ'd *Plunket*, in order to magnify his Services to the Pretender, might write to General *Dillon*, and his Adherents, that he was going to *Rome* with a Friend, and that their Journey would be of great Consequence to the Pretender: And as they pass'd through *Antwerp*, *Plunket* received a Letter from General *Dillon*, directing them to apply to Mr. *Francis Kennedy*, when they came to *Rome*, who would introduce them to the Pretender; and a Letter to that Effect being found among *Plunket's* Papers, sign'd *Dixwell*, and shewn to *Layer* by the Committee, he declar'd, that to the best of his Memory, that was the very Letter which *Plunket* shew'd him at *Antwerp*; and that he believ'd *Dillon* went by the Names both of *Dixwell* and

Proceedings against Bishop Atterbury, &c.

and *Digby*; and that by the Name of *Joseph*, in the Letter, was meant the Pretender.

That *Layer* and *Plunket* arriving at *Rome* the latter End of *May*, 1721. he (*Layer*) a Day or two afterwards, sent to *Francis Kennedy*, Secretary to the Pretender, to let him know he should be glad to see him, to renew his Acquaintance with him (for he had formerly seen him in *London*); That thereupon *Kennedy* came to his Lodging, and promis'd to introduce him to the Pretender privately some Evening, so that no Body should be able to prove his Being there; That being ask'd, if he knew of any Letter to *Plunket*, and it being intimated, they knew from whence it came; he said, he believ'd *Kennedy* delivered a Letter to *Plunket*, under the Pretender's Hand, when *Kennedy* and *Plunket* were alone together; for next Morning, *Plunket* came into the Deponent's Room, when he was in Bed, and told him, with seeming Satisfaction, he had got a Letter under the King's (the Pretender's) Hand, and shewed it him; and the Deponent believ'd it to be the same Hand in which the Blank Receipts taken among his Papers, at Mrs. *Mason's*, were sign'd, which he believ'd was the Pretender's own Hand; and that the Letter was only to let *Plunket* know, that *Kennedy* would introduce him to the Pretender that Evening; and that *Plunket* told him, he saw the Pretender the Night before the Deponent was introduced.

That the Letter it self was taken, with some other Papers, *Plunket* deliver'd to Mrs. *Faghan*, about *Michaelmas* last, being about the Time *Layer* was taken up: It was dated *Thursday Morn*, a Copy whereof follows:

' This is only to direct you not to mention any
' Thing of Business to any Body, till I have seen
' you. I have not much Leisure to-night, expect-
' ing Visits; but however, I shall be glad to see
' you alone, and agree with you the most private
' Way and Manner, for your Companion and me to
' meet,

' meet. The Bearer, *Fr. Kennedy*, will bring
' you very privately to my House to-night about
' eight o'Clock.

James R.

Layer also depos'd, That *Kennedy*, in his se- Page 345,
cond Visit, appointed him to meet him and Co-
lonel *Haye*, in the Square before the Pretender's
House, at Ten the next Night: That he met
them there, and they conducted him up a Pair of
back Stairs to the Pretender.

Here the Committee insert two foul Draughts
of Letters found among *Plunket's* Papers; the
one without Date or Direction; and the other da-
ted the 22d of *March*, 1721. about ten Days be-
fore they set out; and directed to Mr. *Jackson*
(the Pretender); in the first of which are these
Words, ' There is one that sets out from *Norfolk*
' in a few Days, to let you know the *Tanners*
' (the *Tories*) will stand by you upon Occasion;
' he only stays for me, and offers to bear my Ex-
' pences; so that I shall wait on you, and have
' the Satisfaction to tell you by Word of Mouth,
' what will be acceptable. He carries the List
' with him: No doubt on it, you may have ma-
' ny such now.

In the other, he says, ' The Gentleman I men-
' tion'd to you formerly is come out of the Coun-
' try, with Instructions to wait on you, and ten-
' der you their Service; he offers to bear my Ex-
' pences.'

From these Passages, compar'd with the Letter
receiv'd by *Plunket* from *Dillon* at *Antwerp*,
wherein *Dillon* says, I have sent *Joseph* Advice of
your Journey; and with that Passage in the Pre-
tender's Letter to *Plunket*, wherein he bids him
not mention any Thing of Business to any Body,
till he had seen him, in order to agree with him
the most private Way to meet his Companion;
the Committee infer, That *Layer* did not un-
dertake so long and expensive a Journey on uncer-
tain Prospects of private Business, or of mere Cu-
riosity; but that his Journey was concerted with

the Pretender's Friends here, and notified to the Pretender; and that he carried him Tenders of their Service, with a List of Names, which was of Importance; though *Layer*, in his Answers, endeavoured to explain it in such a Manner as was not consistent with *Plunket's* foul Draughts; nor to the Expectations that seem'd to have been rais'd in the Pretender, and his Agents, from *Layer's* and *Plunket's* Journey.

Layer further declared to the Committee, that on his being introduc'd to the Pretender by *Kennedy* and *Haye*, the Pretender ask'd him the Occasion of his Coming, and if he had any Credentials from the People in *England*; and he answer'd, Nothing but Curiosity, and a Desire of paying my Duty to your Majesty, has brought me hither; then the Pretender ask'd him, what Lords he was acquainted with: He answer'd, none but such as he was concerned with in the Way of his Profession: That the Pretender was surpriz'd, he had no Credentials or Recommendations from any Person in *England*, and said, This Journey must have been very expensive; it could not cost you less than 500 *l.* He answer'd, A private Affair brought him to *Venice*, which would have defray'd the Expence, if it had succeeded; but being disappointed in that, his Inclination drew him on to *Rome*, to pay his Duty to the Pretender, which he had long had in his Thoughts. That *Plunket* had told him, he need not fear being introduc'd; and the Pretender answer'd, He believ'd *Plunket* to be a very honest Man, and as proper a Person as *Layer* could have for a Companion.

That the Pretender again express'd his Surprise, that he had no Recommendation from *England*, but said, *Kennedy* had given him a good Character, and for that Reason he was welcome without any Credentials.

Yet the Committee observe, that *Dr. Blackerby Fairfax*, an intimate Acquaintance of *Layer's*, had depos'd upon Oath, That *Layer* told him, since his Return, That while he was at a private Audience with the Pretender, a *Scotch* Colonel broke

broke in upon them, and the Pretender thereupon took him into another Room, and there *Layer* deliver'd his Credentials to the Pretender.

Layer depos'd further, That the Pretender ask'd him, what County he was of, and what Gentlemen he knew; and answering, he was of *Norfolk*, and knew all the Tory Gentlemen there; the Pretender ask'd, if he could set them down in Writing. *Layer* reply'd, he could easily do that, having brought with him *Memorandums* of their Names. That accordingly he drew up a fair List of the Tory Gentlemen of *Norfolk*, and gave it to the Pretender at a second Interview; That the Pretender ask'd him, if he would see the Queen (his Spouse), and promis'd she should admit him to kiss her Hand. Page 346.

That about three Weeks or a Month after, he was introduc'd to the Pretender and his Spouse; and the Pretender ask'd him, if he had any Thing to say in relation to his List; and that the Deponent answering, he had forgot something, the Pretender spoke to his Spouse in *Italian*, and she withdrew; whereupon the Deponent said, he had nothing so material to offer, as ought to have procur'd him that great Honour and Indulgence; but if there was any Thing on Earth he could do, he was most ready. The Pretender then demanded, what he could do, and if he had any Acquaintance? To which he answer'd, That all the Persons mentioned in his List were entirely devoted to the Pretender's Interest, and all the Gentlemen in *England* the same, except those in Places of Profit and Trust, and that all Parties were united in his Interest: Adding, That the Gentlemen in his List were all Tories, and he had not put down any of the *Roman* Catholicks of *Norfolk*, of whom there were several Men of Estates. That the Pretender said, That he believ'd the People of *England* were generally well inclin'd to his Cause, and pretty well convinc'd of their Error; and then spoke of the Discontents occasion'd by the *South-Sea* Scheme.

The

The Committee observe, That in the Cypher which *Layer* receiv'd from Sir *William Ellis*, the Names of several *Norfolk* Gentlemen are inserted, who probably made Part of *Layer's* List given to the Pretender; but in Justice to those Gentlemen, they observe, That *Layer* own'd, in order to magnify the Number of the Pretender's Friends, he did in his List insert the Names of Persons as well affected to the Pretender's Service, without having any Authority from them for so doing; and it was evident he made no Distinction between the Innocent and the Guilty.

He depos'd further, That the Pretender commended his Zeal, and said, he might depend on any Service he could do him: *Layer* then desir'd some Token by which he might obtain Credit among the Pretender's Friends, of the Nobility in *England*, and obtain'd, That of the Pretender and his Spouse's Answering for his Child: That upon his desiring a Letter to the Dutchess of *Ormond*, to represent the Pretender's Spouse, Colonel *Haye* said, no Letter could be sent by him, but that Care would be taken the Dutchess should stand; and bid him tell the Dutchess, the Duke of *Ormond* was well, and gone to *Madrid*, by which she would understand the Business he came about.

That he return'd to *England* about the End of *August* or Beginning of *September*, 1721. and waited on the Dutchess, with his Request, adding, that he hop'd she was not altogether a Stranger to that Affair; to which she return'd him no particular Answer, but promis'd to stand God-mother, as he desir'd.

That he then made Application to Lord *Orrery*, to stand with her, by *Thompson*, whom he took to be her Chaplain, and by *Swortsegger*, Lord *Orrery's* Secretary, who understood that Lord *Orrery* was desir'd to represent the Pretender: That the said Lord sent to the Dutchess, to know whether she stood; who answer'd, that she did; yet Lord *Orrery* refus'd; but upon farther Acquain-

Acquaintance, and hearing that Lord *North and Grey* had consented to stand, he sent for *Layer*, and made Excuses to him for this Refusal; That he made use of this Credential to Lord *Orrery*, to induce him to converse freely with him in Relation to the Pretender's Affairs, having heard that the said Lord was in the Pretender's Interest.

That upon his being refus'd by Lord *Orrery*, he made his Application to Lord *North and Grey*, as mentioned in his Trial, who stood, knowing, as he believes, that he stood for the Pretender; That this Transaction was the Beginning of his Intimacy with Lord *North and Grey*.

That the first Conversation he had with Lord *North*, relating to the Pretender's Affairs, was soon after the Christening; that he then ask'd Lord *North*, whether nothing could be undertaken in the Pretender's Favour, his Lordship being a military Man; That his Lordship reply'd, he believ'd the Pretender had Friends enough, if they did but understand one another; That the Army in general, and most of the Half-pay Officers, were well inclin'd to the Pretender.

That in *July* last, he, *Layer*, going down to *Norfolk* on the Circuit, call'd on Lord *North and Grey* at *Epping*, and again, on his Return, that he then ask'd the said Lord again, whether nothing could be done in Favour of the Pretender? That Lord *North* said, how can any Thing be done while so great a Body of Forces is encamp'd under the very Walls of *London*, besides the Encampments in other Parts of the Kingdom? That *Layer* told him, he found most of the Gentlemen in *Norfolk*, that were *Tories* before, *Jacobites* now; That Lord *North and Grey* said, it was the same in other Counties, but that nothing could be done till the Camp should break up; That upon *Layer's* pressing him to know, whether any Scheme was form'd, Lord *North* said, what does your Friend, Lord *Orrery*, think of Things? That he answer'd, Lord *Orrery* was of Opinion, nothing could be done without a foreign Force; That Lord

Lord *North and Grey* reply'd, I cannot be of his Opinion, I believe the People of *England* may do it of themselves.

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That *Layr* visiting him during the Vacation, and staying two or three Days at his House, continu'd to press him about forming a Scheme ; That Lord *North* replied, We Soldiers do not trouble ourselves much about Schemes ; *Be you quiet, something will be done.* And at his Examination before the Lords, he own'd Lord *North and Grey* said, If there be a Rising, you shall not want Men, or Money, or Arms.

That *Layr* gave the Committee an Account of his carrying *Lynch* to the Lord *North and Grey's*, on *Lynch's* telling him he had something to propose to that Lord, that might be of Service to the Pretender ; and that *Layr* said, He did not shew *Lynch* any Thing at the *Greenman*, but some *Memorandums* transcribed out of the Prince of *Orange's* Declaration ; that he own'd his carrying *Lynch* to Lord *Cadogan's*, but said, He went thither only in Relation to the Purchase of an Estate ; that while they were waiting there in a Room next to the Garden, *Lynch* view'd the Garden and House, and said, I can easily seize you this General ; but he deny'd their having had any previous Discourse to this Purpose, and said, the Proposal arose from *Lynch*, and that he, *Layr*, was mad enough to make it Part of his Scheme.

He said, That when *Lynch* and he came to Lord *North and Grey's*, his Lordship ask'd him, who *Lynch* was ; that he said, he was an honest Gentleman recommended by a particular Friend ; that his Lordship said, I wonder you would bring him ; you know I am not easy, nor free before Strangers : That however, Lord *North and Grey* entertain'd *Lynch* civilly, and after Supper enquir'd of him, whether he was in the Army ; to which *Lynch* answer'd, That he was bred up to Merchandize, but had been with the Pretender in *Scotland*, and had the Command of a Ship under the King of *Spain*, in the Descent on *Scotland*,

land, and enlarg'd much on his Loyalty and Zeal for the Pretender; but the Lord *North* wav'd the Discourse.

That not long after *Lynch* came down again to Lord *North* and *Grey's* to *Epping*, while *Layer* was there a shooting, and was civilly received by his Lordship; and that after he was gone, *Layer* making Apologies for *Lynch's* intruding, Lord *North* and *Grey* said, *Lynch* was a good honest Fellow, and had entertain'd them with several merry Stories.

The Committee observe, That what he own'd to them concerning his introducing *Lynch* to Lord *North*, fell very short of what he confessed to the Lords of the Council, on the same Subject, previous to his Trial, and which was sworn by the Clerks of the Council in that Trial.

That *Layer* acknowledged further to the Committee, That during his Stay at Lord *North's* at *Epping* in the Vacation, he again pressed his Lordship to bring Matters to some Issue, in Favour of the Pretender, saying, If something be not done speedily, we shall all be taken up: That his Lordship reply'd, Is not the Camp there still? If you can find some Expedient, it would be well; it is more than I can do: That *Layer* said, It was his Opinion something might be done, even during the Encampment: And in Order to discover whether Lord *North* and Lord *Orrery* had any Scheme of their own, he drew up a Scheme himself, and lodged it with Mrs. *Mason* the Day before he was taken up, designing to have communicated it to those two Lords: That he had some Discourse with *George Wilson*, Dr. *Murphew*, and others, on the Subject of it, before it was drawn up; and being ask'd, who those others were, he said, he could remember only Serjeant *White*, of whom he enquir'd how far the Scheme was practicable: He had indeed shewn the Heads of it to Lord *North*, as he was walking in the Garden; and his Lordship said, All was impracticable during the Encampment, but that he never shew'd his Scheme to any Body, after it was drawn

drawn up in the Form, in which it was left with Mrs. Mason.

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The Committee here take Notice, that the Accounts he gave when he was examin'd before the Lords of the Council, concerning the Shewing his Scheme to any Body, were inconsistent and contradictory; for in some Parts of that Examination, he says, that Lord *North* would not hear of any Thing till the Camp was broke up; That he would not see his Scheme, and said, he might keep his Heads and his Schemes to himself, that there was Time enough for forming a Scheme: And yet in another Part of the same Examination, he says, *Lord North did not dislike a Scheme in general, but disapproved his Scheme.*

From whence the Committee observe, That Lord *North* must have perused *Layer's* Scheme, or he could not have disapproved it; and endeavours to make it appear, not only that the Lord *North*, and other great Men were concerned in the Framing and Drawing it up, but that a Number of Men were actually list'd and provided to execute the several Parts of it. But had it been so, surely more of them would have been discover'd by this Time than we find there are: From *Layer's* Trial, and all the Examinations that have been taken, we scarce meet with a dozen People who can be suspected to have had any Hand in the intended Insurrection.

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The Committee observe farther, That *Layer* being asked to explain by what Services, on his Part, the Shiness the Pretender shew'd towards him, at his first coming to *Rome*, was chang'd into so great a Degree of Confidence, that he should be trusted with negotiating Blank Receipts, under the Pretender's own Hand, for unlimited Sums: He answer'd, That during his Stay at *Rome*, he contracted a Friendship with Sir *William Ellis*, a Servant of the Pretender's; and that at his leaving *Rome*, he settled a Correspondence by Cypher with *Ellis*, and acquainted him from Time to Time, how the Pretender's Affairs went on here. But the Committee remark, that this general Answer

swer does by no Means account for the Terms of Thankfulness and Respect, with which *Ellis* writes to him from the Pretender; nor was a sufficient Foundation for his being admitted to so particular a Trust. *Layer* added, That in the Course of his Correspondence he wrote *Ellis* Word, that he had got acquainted with *Burford* and *Syms*, (the Lords *Orrery* and *North*) and that if he had but Blank Receipts under the King's (the Pretender's) Hand, he believed he could raise a considerable Sum of Money upon them, and put the Pretender's Affairs in great Forwardness, by engaging a considerable Part of the Army in his Interest: That he did not name any particular Sum to *Ellis*, but hoped to have raised Twenty thousand Pounds by this Method; That he receiv'd from *Ellis* only the ten Receipts found in his Papers, which came to him at different Times by the Post; the first of them the latter End of *July* last: That he intended to have try'd to have put them off among the *Norfolk* Gentlemen, named in the List he gave the Pretender, but had never spoke to any of them on that Subject; he had mention'd his having such Receipts to Lord *North* and *Orrery*, who said, they would be of little Use; for People would scarce venture to keep such Receipts by them.

Layer declared further to the Committee, That he was to have gone to the Lord *North's* to Dinner the Day he was taken up, and that he sent his Servant to that Lord to let him know he was apprehended for High Treason, that his Lordship might provide for his Security.

Page 350.

That it appear'd the Lord *North*, upon this Intimation, endeavour'd to make his Escape; for *Layer* was taken the 18th of *September*, and it was proved by *Floyd*, his Lordship's Servant, who attended him to *Portsmouth*, that the Lord *North* came to Town from *Epping* the 19th of *September*; That he did not go to his own House, but to the *King's Arms* Tavern in *St. Paul's Church-Yard*, and there dismiss'd *Floyd*, with Orders to meet him at Four in the Morning on *Friday*

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day following, over against St. James's Church in Piccadilly; That his Lordship came at the Time and Place appointed, in a hired Coach and Six, without Servants, drove in a great Hurry to Portsmouth, and from thence went to the Isle of Wight, where he was taken; which shew'd the Danger he apprehended himself to be in, after he had receiv'd that Intimation from *Layer* of his being taken up.

The Committee having demanded of *Layer*, from whom he received the Names found in his own Hand-writing among his Papers, (*viz.*)

<i>Dillon</i> - - -	<i>Digby</i> ,	<i>Tories</i> - - -	<i>Tanners</i> ,
<i>Burford</i> - - -	<i>Orrery</i> ,	<i>Whiggs</i> - - -	<i>Wags</i> ,
<i>Regent</i> - - -	<i>Steele</i> ,	<i>Plunket</i> - - -	<i>Rogers</i> .

He answer'd, the Names of some Persons whom he had Occasion to mention in his Letter to Sir *William Ellis*, not being inserted in the Cypher he received from *Ellis*, he applied to *Plunket* to know by what Names he should describe them, and that *Plunket* gave him the six fictitious Names above-mentioned; which Names the Committee found frequently repeated in *Plunket's* Letters and Papers. *Layer* being asked by the Committee, if *Plunket* explained to him who were meant by *Burford's* Club; he said *Plunket* told him, it was an Appellation made Use of by the Pretender and his Agents, to denote a Club of Tory Lords; of which Club, Lord *Orrery* was Chairman; but the Committee observe, that several Persons were mention'd, as Members of that Club, in *Plunket's* Papers, that were Men of a very different Character.

The Declaration of William Earl Cowper, shewing, that the Matters contained in some Hearsays, relating to him in the Examinations of Christopher Layer, are false and groundless.

March 20, 1722.

Earl Cowper's
Declaration
concerning the
Burford Club.

‘ **T** Hough Hearsay does not affect any one,
‘ either in Law or Reason, yet it deserves
‘ Contradiction where the Truth will bear it, espe-
‘ cially

cially if printed: And therefore finding that *Layer*, in his Examinations of the 19th of *January* and 4th of *February* last, hath said, That one *Plunket* told him, (as explaining what was meant by *Burford's Club*) that Lord *Orrery* was Chairman, and that Lord *Cowper*, and seven other Lords, and six Commoners nam'd, were of that Club; and that this Club met monthly as he (*Layer*) thought, at one another's Houses: And not doubting but my Averment will be believed before any Hearsay, especially from one in *Layer's* sad Circumstances; I do hereby declare and affirm upon my Honour, That I do not know or believe, and never heard before the said Examinations were talked of, that there was any such Club or Meeting: That as to three of the Commoners nam'd, viz. Sir *H. Goring*, Mr. *Darwkins*, and Mr. *Shippen*, I do not know them so much as by Sight; and as for two of the remaining three Commoners, viz. Sir *Conf. Phipps*, and General *Webb*, I have not been in their, or either of their Companies at any Time within sixteen Years last past; and as to the Lords, I never met them, or any of them, but either accidentally on Visits of Ceremony, or in the Time of Parliament, and that with other Lords, on the Business of Parliament only: And for one of the said Commoners, whom I am acquainted with, viz. Mr. *Hutcherson*, I never once was at any Meeting with him, together with any of the said Lords or Commoners. And whereas *Layer*, in his Examination of the 19th of *September* last, said, that Lord *Orrery* told him, that Lord *Cowper* told him, (Lord *Orrery*) that two hundred Tories, and ninety Grumbletonians, would try their last Effort in the House of Commons: And in another Examination of the 21st of the same Month, *Layer* repeats the same, except that he uses the Words *Angry Whigs* instead of the Word *Grumbletonians*; I do hereby declare and affirm upon my Honour, that I never said so to Lord *Orrery*,

‘ *very*, nor to that Effect, nor any Thing like it:
 ‘ And I do therefore verily believe that Lord Or-
 ‘ *very* never said that I did.

Cowper.

*A Declaration signed by Archibald Hutcheson, Esq;
 and given to several of his Acquaintance soon
 after he had perused the Examination of Christo-
 pher Layer, in the Appendix to the Report of
 the Secret Committee, in which Layer has made
 Mention of his Name, as one of Burford's Club;
 which the said Layer, in his Examinations
 saith, he was told by one Plunket.*

March 4, 1722.

Mr. Hutcheson's
 Declaration
 concerning
 Burford's Club.

‘ **H**AVING read Part of the Examination of
 ‘ *Layer*, of the 19th of *January* and 4th
 ‘ of *February* last, in the Appendix to the Re-
 ‘ port of the Secret Committee, in which *Layer*
 ‘ is mention'd to have said, that one *Plunket* told
 ‘ him, as explaining what was meant by *Bur-*
 ‘ *ford's Club*, that Lord *Orrery* was Chairman,
 ‘ and that this Club met monthly at one another's
 ‘ Houses, as *Layer* thought; and that *Plunket*
 ‘ told him, that there were eight other Lords,
 ‘ and six Commoners (whose Names he mentions,
 ‘ and mine as one of them) of that Club: I do
 ‘ hereby declare upon the Honour of a Gentle-
 ‘ man, That I do not know or believe that there
 ‘ was a Club or Meeting of any of the Lords or
 ‘ Gentlemen mentioned in the said Examination;
 ‘ nor have I ever heard of any Meeting where
 ‘ Lord *Orrery* was present, except that which
 ‘ was carry'd on in the two last Sessions of Par-
 ‘ liament, when Lord *Orrery*, and several Lords
 ‘ and Gentlemen (not mention'd in *Layer's* Exa-
 ‘ mination) met weekly, and I believe with great
 ‘ Innocence din'd at one another's Houses; and
 ‘ I do further affirm, that even on accidental Vi-
 ‘ sits I have seldom met together any two of the
 ‘ Lords and Commoners so mentioned in *Layer's*
 ‘ Examination; That there are two of those
 ‘ Commoners (Sir *H. Goring* and Mr. *Dawkins*)
 ‘ whose

‘ whose Faces I do not know ; and two others,
 ‘ (General *Webb* and Sir *Cons. Phipps*) between
 ‘ whom and me there hath not been, for fifteen
 ‘ Years last past, the Intercourse even of Cere-
 ‘ monial Visits ; and between me and the fifth
 ‘ Commoner (Mr. *Shippen*) but very seldom : That
 ‘ there are three of those Lords (*Scarsdale, Cra-*
 ‘ *ven, Gorwer*) with whom I have very little Ac-
 ‘ quaintance ; a fourth, (Lord *Bingley*) whom I
 ‘ have never met any where, but in Visits to o-
 ‘ thers, or in publick Places ; and a fifth, (the
 ‘ Bishop of *Rocheſter*) in whose Company I have
 ‘ been but twice in three Years Time. I mention
 ‘ this to shew the notorious Falshood of *Layer’s*
 ‘ Hearſay Evidence of *Burford’s* Club, an Appel-
 ‘ lation I never heard of till ſome Time after the
 ‘ Appointment of the Secret Committee.

Arch. Hutcheſon.

That *Layer* declared he went often to viſit
 Lord *Orrery*, and had frequent Converſation with
 him relating to the Pretender’s Affairs, and the
 Neceſſity of Foreign Aſſiſtance ; and that Mr.
Swortſegger, Lord *Orrery’s* Secretary, came to
 him once, and told him, that Lord *Orrery* had
 left a Note in Writing, that if *Layer* came to
 Town, he ſhould come to Lord *Orrery* in the
 Country ; which Invitation he underſtood to be
 with an Intention of their diſcourſing more at Lei-
 ſure about the Pretender’s Affairs ; and that the
 ſaid Secretary, on his Examination declared,
 he had ſometimes ſeen *Layer* at his Lordſhip’s
 Houſe.

This was the Subſtance of what Mr. *Layer* Page 351.
 confeſſed in his Examinations before the Council,
 and the Committee of the Houſe of Commons :
 And the Committee obſerve, that though *Layer*
 expreſſed a great Openneſs and Frankneſs when
 ſuch Queſtions were put to him, as tended only
 to a general Diſcovery to accuſe himſelf, or ſuch
 as he knew were eſcaped out of the Kingdom ;
 yet when ſuch Queſtions were aſked, as he appre-
 hended might affect or diſcover any other of the

Observations
on *Plunket's*
Conduct.

Conspirators, he always answered with great Shiftness and Reserve ; which occasioned the Inconsistencies and Contradictions taken Notice of above.

The Committee next proceed to report what they had collected from the Papers and Examinations of *John Plunket* : And first they observe, That *John Plunket*, not only of late, but for many Years pass'd, had been employed in carrying on treasonable Correspondences with Persons of high Rank and Distinction abroad ; That a very great Share of Confidence had been placed in him by the Pretender, and several of his most considerable Agents ; and that he had been a principal Actor in the late horrid Conspiracy ; and, as they had Reason to believe, concerned in the blackest Part of it.

Then they repeat the Evidence given against *John Plunket* by *Laver* in his Examinations, as that he had twice a private Conference with the Pretender, was well receiv'd by *Kennedy*, and his Agents at *Rome*, &c. They next recite the Evidence, that was given at *Laver's* Trial, of his meeting *Matthew Plunket*, and tampering with him to seduce some of the Serjeants and Soldiers of the Guards, and engage them in the Pretender's Service : They add, that *Matthew Plunket* deposed before the Committee, that *John Plunket* told him the Business (meaning the Invasion) had been done before, but that the *French* Ambassador wrote to the Regent, and the Regent acquainted King *George* with it ; which occasioned the Army to be encamped.

The Committee further observe, That among *Plunket's* Papers was found a large Cypher of Names, with fictitious Names over-against them, sworn to be all of *Plunket's* Hand-writing ; which Cypher tallied with and explained an original Letter of the 23d of *July* 1722, directed to Mr. *Digby* at *Paris*, and signed *Rogers* ; which was stop'd at the *Post-Office*, and sworn likewise to be *Plunket's* Hand. And several other Letters directed to *Digby*, and signed by *J. Rogers*, having also been

been opened and copied at the *Post-Office*, and sent forwards, the Clerks, who were employed in copying them, had sworn that, to the best of their Memories, the Originals of the said Letters were all written in the same Hand with that of the 23d of *July*, which was stop'd, and sworn to be *Plunket's* Hand-writing; and the Reason of stopping but one of those was, that one was thought sufficient to discover the Writer; and the Permitting the Correspondence to be continued, might help the Government to farther Light in this Affair.

The Committee observe, That in the Copy of the Letter signed *J. Rogers*, directed to *Digby*, and dated the 5th of *July* 1722, the Person, who wrote that Letter, says, that his Fellow Traveler's (*Layer's*) Wife parted the Day before for *Paris*, and that he gave her a Letter to him (*Digby*): Which agreed with *Layer's* Confession, that *Plunket* did give Mrs. *Layer* a Letter of Recommendation to *Dillon*, signed *Rogers*: And that he received from *Plunket* the Name of *Digby*, to denote General *Dillon*; and that *Dillon* went by the Name of *Digby*, is put past all Doubt, by a Discovery made by Mr. *Crasford*, his Majesty's Resident at *Paris*; who being order'd to discover the Person meant by that Name, made Use of the following Contrivance, mentioned thus in his Letter: ' I have just now found out who Mr. *Digby* is; I folded up a Paper in the Form of a Letter, and sealed it, and directed it to Mr. *Digby* at *Paris*; then wrapt it up in a Piece of waste Paper, with a *Memorandum* in it, to be inform'd at Mr. *Waters's*, Banker, in *Christine-street*, in what Part of *Paris* Mr. *Digby* liv'd. I gave it thus made up to a sharp young Fellow, who speaks both *French* and *English*, and order'd him to go booted, and a little dirty, to Mr. *Waters's*, to open before him the sham Letter, and read his *Memorandum*, and to shew him the Direction of the Letter, and to desire him, at the same Time, to send some Body with him to conduct him to the Place where it was to be delivered; that as soon as he should come to

' the Door where he was to deliver it, he should
 ' pretend to have left a Packet at home; and ma-
 ' king, as if he would go back to fetch that Pack-
 ' et, he should slip away from the Person who
 ' shew'd him thither. The Thing succeeded bet-
 ' ter than I expected, for *Waters* was not at
 ' Home, and my Man acted his Part so well, that
 ' *Waters's* chief Book-keeper, without giving him-
 ' self the Trouble of going, wrote the Direction
 ' for him upon my sham Letter, in the Manner
 ' your Excellency will see in the enclosed. The
 ' Book-keeper was very desirous to have the Let-
 ' ter, in Order to deliver it himself; but the Man
 ' insisted to deliver it with his own Hand, and
 ' answer'd boldly to some Questions which the
 ' Book-keeper asked him, pretending he was to
 ' return the next Day for *England*. The Direction
 ' writ by Mr. *Waters's* Book-keeper, under the
 ' Name of *Digby*, was, *A Monsieur Dillon Rue*
 ' *Colombier a l'Hotel d'Holande*; which, as your
 ' Committee are informed, is the ordinary Resi-
 ' dence of Lieutenant-General *Dillon*.

Notwithstanding this Evidence of *Plunket's* cor-
 responding with *Dillon*; when he was examined, he
 denied his knowing General *Dillon*, or ever ex-
 changing a Letter with him, or his Secretary:
 He own'd he had once receiv'd a Letter from one
Farely, a Popish Priest, formerly Governor of the
 Duke of *Berwick's* Children, signed by the Name
 of *Digby*, and relating to Stocks of *Nicholas Wo-*
gan, and others. The Committee observe, That
 in this prevaricating Answer, he was labouring to
 account for the Meaning of the Word Stocks,
 which is mentioned in the Letter from *Digby*;
 That upon pressing him further, to see if he would
 own the Correspondence with *Dillon*, and acknow-
 ledge the Letters the Committee had such Evi-
 dence of, he run himself into such an evident Ab-
 surdity and Inconsistency, as appear'd to them a
 strong Argument of his Guilt.

That among his Papers was found the foul
 Draught of a Letter, dated *March 22, 1721*, and
 directed

directed to Mr. *Jackson*, (the Pretender) in which are the following Passages.

‘ I look Sir on your Law-Suit to be in such a Forwardness, that a speedy and happy Replication must inevitably insue; the *Waggs* as well as the *Tanners*, (which Names he explain’d to *Layer* to denote the *Whigs* and *Tories*) seem convinc’d that nothing less can redress their Ruin; nay, the latter is apprehensive the former will compliment you with it on your own Terms, in Order to engross your Favour for the Future. The Precepts, my Friend and I gave in lately, have contributed much to this Emulation: We have more to give in; and if they improve them, as they have the former, you will have a good Game on’t.’

Besides these, they recite the two Passages in *Layer*’s Examination, concerning his going to *Rome* with *Layer*, who would bear his Expences; and observe, that in the Minutes or Heads of the said Letter, *Plunket* says, ‘ *Wag* and *Tanner* will equally concur——My Friend will wait on you to tender their Service——Our Message will pin the Basket——You may have daily Messages of this Kind: You will be courted; it is the *English* Way.’——

Here the Committee again observe, How inconsistent these Accounts of *Layer*’s Journey are with those given by *Layer* himself; and how strongly they contradict *Plunket*’s bold Affelevation, that he knew nothing of *Layer*’s Intending to go to *Rome* before they set out. Page 354.

That another foul Draught of a Letter was found among *Plunket*’s Papers, which appeared to be written about the Beginning of the last Year, in which are the following Passages.

‘ I had four of Count *Bothmar*’s Letters since my last to you: Mr. *Burford* had them all: His Clerk gave me to understand they were sent to Mr. *Jos*-----This made me not to trouble you: This only to wish you a happy New Year; I hope it will bring the Law-Suit to bear afore it will end: If they would have Courage and Integrity, they may walk King *George* out before *Lady-day*

‘ next : He is weary of them, and thinks no more
‘ of staying among them.’

The Committee apprehended from this Paper, that *Plunket* had conveyed Copies of some Letters of Count *Bothmar*’s to Lord *Orrery* ; That Lord *Orrery*’s Clerk had given him to understand these Letters were sent to the Pretender ; from whence they concluded, that either Lord *Orrery*, or his Clerk, had a direct Correspondence with the Pretender ; ——— That *Simon Swortsegger*, Secretary to the Lord *Orrery*, own’d, on his Examination before the Lords of the Council, that he was acquainted with *Plunket*, and had been in Company with him and *Layer*, at Mr. *Aaron Thomson*’s Chambers——That *Plunket* also owned to the Committee his being acquainted with *Swortsegger*, and that he had been in Company with him and *Layer*, at *Layer*’s House ; but denied his knowing any Thing of the foul Draughts of the Letters above-mention’d.

That *Plunket*, in his Letter to *Digby* of the 21st of *May*, says, ‘ I hope in a little Time Mr. *Joseph* (which *Layer* own’d to be the Pretender) will be the Ministry’s only Refuge. *Burford* (whom *Layer* declared likewise to be *Orrery*) and his Club seem to think so: They will have a Finger in the Pie, if they can ; I know they can come in for a good Share in it, if they can have a little Concert and Regulation ; there are those that will undertake to do the Job in twelve Hours Time : A little Time will shew, whether they will give fitting Encouragement ; if two or three is taken off, no Matter how King *George* will go off, by hook or by crook ; and of Course, the Lowty will be for *Joseph*. This has been communicated to your Friends.’

What was meant by the Lowty did not appear by his Cypher ; but by the Sense and Alphabetical Order of the Cypher, it was not improbable that it meant the Ministry.

That in the same Letter of the 21st of *May*, *Plunket* takes Notice, That *Johnson*, an Acquaintance, was taken up the Day before, but had
burnt

burnt his Papers, and seem'd to be easy in the Matter; adding, I believe they will get nothing of him: But *Plunket* being ask'd, Whether he was acquainted with *George Kelly*, alias *Johnson*; said he knew him by Sight and Coffee-house Acquaintance only; That he did not remember his ever having receiv'd a Letter from him; and *Kelly* gave the same Account in Relation to *Plunket*; yet a Letter from *Kelly* was found amongst *Plunket's* Papers; and *John Malow*, who waited on *Kelly* at his Lodgings, depos'd, That *Plunket* often visited *Kelly* there; and the Committee were satisfied they were privy to each others treasonable Correspondence, by some Passages in the Letters to and from *Kelly*, in which Mention is made of *Plunket*, by the Name of *Rogers*.

Plunket's next Letter to *Digby* (*Dillon*) is of the 31st of *May*, in which he says, he finds ' the
' Regent had a Hand in keeping K. *George* from
' going abroad, so that the Ministry will carry on
' their Game safely and leisurely, without any Op-
' position whatever from the Club, or any of the
' Pretender's Friends; he adds, let them be ever
' so sanguine, they can do nothing, as long as the
' Regent stands by the Ministry; but should *Or-*
' *mond* come with half a dozen Regiments only,
' he would carry his Point, and make K. *George*
' run for it.'

This Passage confirm'd what had been intimated above, That the late Duke of *Ormond's* Coming over made Part of the original Scheme, and agreed with the Accounts receiv'd from *Spain* of *Irish* Soldiers, provided there for the Pretender's Service.

The Letter goes on, ' If *Burford*, (Lord *Orre-* Page 355.
' *ry*) and the Club, have a Mind to have K. *George*
' deliver'd up to them, he shall; there are those
' that will undertake it, and offer to do whatever
' requir'd: ' And in his Letter of the 4th of *July*,
says—— ' I can assure you, Despair has made
' some to take a Resolution to lay violent Hands
' on K. *George*, but there is a Stop put to them
' at present; it is not the Pretender's Interest, but
' you

‘ you cannot do so always; an ill Precedent is dangerous.’

He adds, That ‘ tho’ there should be a Rising in most Parts; if the Mob is beat in one Place, the Rest will go home and be quiet for seven Years.

In his next Letter of the 21st of *June*, he says, That *Burford* and the Club think themselves slighted by the Regent and Ministry of *France*, and conceive that the Regent joins with King *George* to be reveng’d on them. That he may have room to repent, early or late; for should the Parliament be broke, and a new one call’d, he might find himself more embarras’d than he is aware of: He adds, ‘ If the Regent stands neuter, they will soon bring the Law-Suit to bear; so far I am satisfy’d of it, that four or five hundred Men, and as many Arms, with 1500 *l.* will complete the Matters in a little Time, and give a good Account of K. *George* and the Ministry. The Army want only an Opportunity to do their Duty. This Scheme, if duly and discreetly managed, will give them an Opportunity to do it. Were we sure the Regent would not interpose, we would take it in Hand forthwith.’ *Plunket* adds in the same Letter, ‘ If the Regent and Court of *Spain* will but ply K. *George* with large Demands, and bring the *Czar* down to *Hannover*, the Pretender will have *Carte Blanche* from the Ministry and K. *George*, as also from the Rest of his Friends and Foes. This I take to be the best and safest Way, both for the Pretender and his Well-wishers.

In his Letters of the 4th and 5th of *July*, 1722. he had the Vanity to tell *Dillon*, That he had been desir’d by some leading Members of the then Parliament, to acquaint the Regent’s Agent here, that it was now in the Power of the Regent, and *Spain*, to send away King *George*, and to send home Mr. *Jos.* with a *Bonne Grace*, and much to their Advantage; That it was only to insist on the Stipulation King *George* had made with them, and they would have a fair Pretence to do it.

It appears by other Passages, that this suppos'd Stipulation relates to the Cession of *Gibraltar*.

He afterwards gives an Account, That he did, both on the 4th and 5th of *July*, wait on the Regent's Agent with this Message, and says, That as that Agent was acquainted with some of the Members of Parliament who imploy'd him, he gave some Attention to him; but the Objections, which the Regent's Agent made, appear to have been, That the Pretender had not the Name of a Man of great Parts or Resolution; That he had hitherto no great Opinion of *Burford*, and the Club, and that such a Procedure on the Part of the Regent, would be a Violation of the *bonne Foy*. To which last *Plunket* reply'd, That it would be no Breach of their *bonne Foy*, to be grateful to those who were their Deliverers formerly; however, *Plunket* says, he convinc'd the Agent, that it was now in the Regent's Power, to make the Ministry and King *George* give the Pretender a *Carte Blanche*; and by so doing, to make the Emperor vomit up what he has now in *Flanders*, without striking a Stroke. That the common People, the Country Party, and all the *English* Gentlemen, might be brought to join with the Regent in proper Measures to do it; or that if the Regent would but stand neuter, they would soon bring the Pretender's Law-Suit to bear, independent on any whatever. He adds, That he is satisfy'd the Agent would write these Sentiments to his Court, and that it is *Dillon's* Business to let the Regent see he has the same Sentiments from other People here.

In the same Letters, he tells *Dillon*, Now is Page 356.
the Time for the Regent and Ministry of *France* to serve you; if they do not, I can assure them they may have Room to repent it; for the Pretender's Friends will find Means to get into the Saddle in spite of the Ministry of King *George*. He adds, That the Army will not stand by the King and Ministry, against the great Bent of the *English* Gentlemen, the common People, and the Country

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Country Party, who are so incens'd against the Court, that the least Accident would surely overturn what they have been doing these seven Years past.

He then says, That his Fellow Traveller is, and has been very Active, since his coming from his Travels, and is more serviceable than those who move in a higher Sphere; That he is spurring on the Club daily, and has made many of them more Active in the Law-Suit than they otherwise would have been; That his Wife parted the Day before for *Paris*, and that he gave her a Letter for *Dillon*; his Fellow Traveller thinking himself intitled to it, or any other Civilities *Dillon* could shew her, during her Stay there; he adds, your Friends continue their Preparation, and resolve to hold themselves in Readiness on Occasion.

The Committee take Notice, That these Letters were writ just about the Time that *Layer* went down to *Norfolk*; and they think the sanguine Manner in which *Plunket* writes, is in Part accounted for, by what Lord *North and Grey* told *Layer*, That the Encampment had spoil'd the Project; but we shall have them again. And by his Lordship's saying, be you quiet; something will be done: If there be a Rising, you shall not want Men, or Money, or Arms: And that these Letters and Passages make it highly probable, that the Substance of *Layer's* Scheme had not been only seen, but approv'd of.

Notwithstanding the Account, which *Plunket* gives in this and other Letters, of *Layer's* Proceedings; yet *Layer* deny'd, that he had ever open'd himself to *Plunket*, in relation to the Pretender's Affairs, after their Return from *Rome*; and *Plunket* affirm'd, That he only knew *Layer* by Coffee-house Acquaintance, and never convers'd with him, but in the Streets, publickly.

Plunket's next Letter is of the 23d of *July*, the Original of which being stopp'd, and being sworn to be his own Hand-writing, the Committee think it proper to lay the Whole before the House,

House, with the Explanation of the fictitious Names taken out of the Cypher, which is sworn to be his own Hand-writing also.

A Monsieur Digby a Paris.

Under a blank Cover to Waters. July 23. 1722.

‘ BY the Time this comes to hand, King
‘ George’s Agent will arrive there; I am
‘ glad on’t, because I hope all the Negotiations
‘ and Proceedings of the Ministry, and King
‘ George, will be laid before the Parliament;
‘ which will be a Means to send him to *Hannover*;
‘ tho’ he thinks to bring the Country Party to
‘ approve of whatever he will propose to the Par-
‘ liament, he will hardly even bring the Court
‘ Party to do it. He thinks to disculpe himself at
‘ the Expence of the Dead. This I told some of
‘ the Parliament-men; they say ’twont do for
‘ Love or Money. Certain Persons are forming
‘ Projects that will distress the Court of *Spain*, in
‘ Case of War between *Spain* and the Emperor.
‘ Count *Bothmar* comes into it by King George’s
‘ Connivance; ’tis now in *Embrio*; when it comes
‘ to Perfection I shall be Master on’t. I gave a
‘ Hint on’t to the Regent’s Agent; he was not a
‘ little surpriz’d at it. They must not linger much
‘ longer; if they do, the Emperor and King
‘ George will find Means to distress the Court of
‘ *Spain*, and the Ministry in *France*; they must
‘ hasten the Peace to prevent it.

‘ My Companion, who has been in the Coun-
‘ try this three Weeks past, came to Town yester-
‘ day: He seems to be sure of his Game, viz.
‘ That Mr. *Joseph*’s Friends will run down the
‘ Ministry and King George in a little Time, and
‘ bring the Law-Suit to bear on their own Bot-
‘ tom, and independent of the Regent, or any
‘ Body else; I am resolv’d to know nothing of
‘ their Proceedings; I am for having every Thing
‘ laid before the Parliament first; and then every
‘ Body will see we want the Pretender more than
‘ he

Proceedings against Bishop Atterbury, &c.

' he wants us ; both Friend and Foe will join in
 ' any Enterprize that will be made in his Favour ;
 ' neither will they ever dare upbraid him, if on
 ' any Occasion he should look askint on 'em here-
 ' after. I hinted often, the only Way to spirit
 ' 'em up was, to convince 'em the Law-Suit
 ' would be brought to bear without them ; and
 ' that by the Regent and King *George*. The Con-
 ' struction they put upon this, that the former
 ' was subtle enough to make use of the Folly of
 ' the latter, to play the Game to his own Advan-
 ' tage at our Cost ; and that he will govern Mr.
 ' *Joseph*, when here, as he does now K. *George*.
 ' This, or some such Imagination, gave them an
 ' uncommon Resolution, and I believe they will
 ' struggle hard for a Start in the Race of Ho-
 ' nour. 'Tis in the Regent's Power to make
 ' King *George*, the Ministry, and the Club, to
 ' give Mr. *Joseph* a *Carte Blanche* : 'Tis incum-
 ' bent on you to convince him of it. I am sure
 ' his Agent here is already, for I gave him this
 ' Morning demonstrative Proof, that King *George*
 ' designs to support the Emperor against the
 ' *French* King, and his Coss. And that without
 ' being seen in it.

Page 357.

' I would be glad to know how the Duke of
 ' *Berwick* does, and if he continues there this
 ' Summer. I have little to do in Town, so I de-
 ' sign to go to the Country for three Weeks. The
 ' Town is dull and empty.

' We hear the *Czar* is in Motion ; I wish it may
 ' be towards *Hannover*, for K. *George* would soon
 ' move from his Country Seat here.

' I believe Mr. *Joseph* will laugh when he'll
 ' hear of the Stratagem I made use of, to bring
 ' his Friends to so good Temper of Duty. I hope
 ' they will keep to it, which is the Wish of,

S I R,

Your humble, obedient Servant,

Jo. Rogers.

In

In his Letter of the 16th of *August*, he says, the Pretender's Law Business continues in the same Plight. My Companion goes on, as he thinks, very successfully, and is confident he will bring the Business to bear in a little Time.

This Letter was writ nine Days before *Laver* went down to Lord *North and Grey's* with *Lynch*. *Plunket* says, in the same Letter, That the Pretender must Promise the Regent and Ministry of *France* fair, and that he will be a fast Friend when in his Power, and must seem to relie more on them than any here; that this is the only Game he has to play at this Time.

In his next Letter of the 23d of *August*, he says, That his Friend came out of the Country a few Days ago, and told him, that his Clients seem now to despair of bringing the Law-Business to bear this next Term, except the Regent were made a Party; That he (*Plunket*) told him, in case the Regent were applied to in a proper Manner, he might be prevail'd on to come into proper Measures, at least indirectly, and without Breach of the *bonne Foy* he owes King *George*, or the Ministry; he adds, that they (his Friend's Clients) are for any Thing, but under their Hands; and that if they should apply to *Dillon*, or the Regent, (as his Companion had told him they soon would) they might safely offer, at least, to come into their Measures, to stop their Mouths hereafter: And he thinks, with Submission, 'tis Pity to hinder them, from plunging themselves, as they did before. He adds, That it is in the Power of the Regent and Ministry of *France*, to make the ensuing Parliament give the Pretender his own Terms; and then, as the *French* King is soon to be of Age, he may do every Thing with a good Grace and *bonne Foy*, and settle the Pretender so, that it will always be in his Power to serve him and the Court of *Spain*.

The Committee next proceed to shew the Share that *George Kelly*, Clerk, had in the said Conspiracy; and as *Kelly's* Correspondences seem'd to derive their Weight and Significancy chiefly

Observations
on *Kelly's* Part
in the Conspi-
racy.

chiefly from his being employ'd by the Bishop of *Rockester*, the Committee first offer their Reasons that induc'd them to believe he was so employ'd, and the Part which it appear'd to them the Bishop had in this Conspiracy.

Page 558.

An Abstract of
Neynoe's Exa-
minations re-
lating to the
Bishop of *Ro-
chester* and
Kelly.

They observe, That *Philip Neynoe*, Clerk, at his several Examinations, had depos'd, That the said *George Kelly* (alias *Johnson*) frequently told him, that the Bishop of *Rockester* held Correspondences with the Pretender and his Agents: That he, *Kelly*, was employ'd by the Bishop, in writing for him, and carrying on the said Correspondences; That *Kelly* told him, the Pretender relied more on Advices from the Bishop than from any other Person; That he had several Times left *Kelly* at the Bishop's Door, when *Kelly* went into the Bishop's House, and stay'd there an Hour or Two; and upon coming Back to him, *Kelly* made Apologies for staying so long, and told him, he had been Writing the Bishop's Letters, which he always apprehended to be the foreign Correspondence of the Bishop with the Pretender's Agents; and that *Kelly* told him, the Bishop never suffer'd him to take a Bit of Paper of the Bishop's Hand-writing out of the Room.

That he knows Letters were directed to *Kelly*, by the Name of *Moses Hancock* and *Hatfield*; and that he has seen at *Burton's* Coffee-house, a Letter to *Kelly* from *Howell* (whom he takes to be Agent or Secretary to *Dillon*, and employ'd by *Dillon* in the same Manner as *Kelly* was by the Bishop of *Rockester*) in which Letter there were Compliments to the Bishop, by the Name of *Naunton*, which Name *Kelly* explain'd to him to mean the Bishop; That *Kelly* has told him the Bishop of *Rockester* went sometimes by the Name of *Jones*; that he had likewise heard the Bishop went sometimes by the Name of *Illington*, which last he was told, by *Mr. Carte*, to the best of his Memory. That in the Letter, which *Kelly* shew'd him at *Burton's* Coffee-house, Mention was made of *Mansfield*, which *Kelly* explain'd to him, to mean the late Duke of *Ormond*. That he

he has seen several Cyphers in *Kelly's* Hands, one in Figures, another of fictitious Names; in which last *Carpenters* stood for *Scotch Soldiers*; *Sadlers* and *Sophisters*, for *Irish Soldiers*, and the like; that he has seen *Kelly* make use of these Cyphers, and that *Kelly*, with great Freedom, own'd that these Cyphers were for carrying on the Correspondence with the Pretender's Agents. That he had likewise seen Cyphers in *Carte's* Hands, who was also employ'd in writing Dispatches to the Pretender's Agents abroad; That he, *Neynoe*, had been employ'd to draw up three several Memorials to the Regent of *France*, to solicit him to send Forces to the Assistance of the Conspirators; the last of which was in *December*, 1721. and contain'd a Demand of Five thousand Men to be sent to invade these Kingdoms; That the Heads of these Memorials were given him by *Kelly*, and one who went by the Name of *Watson*, whom he took to be the late Earl Marshal.

That in *March* last, *Kelly* brought him the Heads of a Letter to be drawn up, with a Design of its being intercepted by the Government, in order to amuse them into a false Security. That he drew up the said Letter in a Paper writ Column-ways; That this Paper was brought back to him, corrected by the Bishop of *Rocheſter*, as he believ'd.

Your Committee are inform'd this Letter was not intercepted, but that a Copy of it was sent about that Time to one of the Secretaries of State from an unknown Hand.

Neynoe farther declar'd, That the Bishop of *Rocheſter*, Lord *Orrery*, Lord *North*, and Sir *Harry Goring*, were the principal Leaders and Directors of the Conspiracy, which was first to have been executed in the Spring of the Year 1722, by seizing the *Tower*, upon which the late Duke of *Ormond* was to have landed in the River; That upon the Discovery of the Plot, and the King's not going abroad, it was put off for some Time; but that it was afterwards resum'd to be attempted in the West. *Neynoe* farther added,

That *Kelly* assur'd him, the Bishop got Notice of his being to be taken up, some Days before it happen'd, and that this Notice was given the Bishop by one of the Lords of the Council.

That these Informations of *Neynoe* were contain'd either in a Paper writ with his own Hand, and deliver'd to the Council, or extracted out of Papers he dictated at several Examinations, which Papers were read to him, and agreed to by him before the Council; That *Neynoe* was intimately acquainted with *Kelly*, often visited him, and lay at his Lodgings; ——— That the Bishop of *Rochester* was acquainted with *Kelly*, invited him to dine with him, and sent to enquire after his Health, and wrote to him.

Substance of
Panner's Depo-
sition.

That *Panner* had depos'd upon Oath, That *Skeene* told him, the Bishop and the Lord *North* had the principal Direction of the Conspiracy, and that 200,000*l.* had been rais'd, and put into the Bishop's Hands, which was call'd the Military Chest; which was to be kept together till the Project was ripe for Execution.

The Dutcheffs
of *Ormond's*
Letter.

That when the Bishop was apprehended, vast Numbers of Letters and Papers were found in his House, dated before the Year 1712; but from that Time, few of any Consequence, except those that follow, (*viz.*) One from the Dutcheffs of *Ormond*, dated *January* 14, 1721. in which are these Words, *I resolv'd to send what I receiv'd; for though it had not happen'd to belong to the Person I address'd it to, I was sure it could not be put into better Hands.*

Page 359.

That in the Cypher which *Laver* receiv'd from Sir *William Ellis*, the Bishop of *Rochester* has the fictitious Name of *Justus*: The other Letter was without Name, directed to Mr. *Dubois*, and in the following Words:

Letter to *Du-
bois.*

SIR, forgive my Silence. You easily conceive the Difficulties I am under in that regard. I write this only to assure you of my sincerest and unalterable Respect, and refer you to the worthy Bearer for News, and for every Thing, which otherwise

‘ otherwise I should have found some Way or
 ‘ other of Writing to you my self. I have heard
 ‘ nothing from you since the Letter I had about
 ‘ two Months ago by Mr. *Johnson*, to which I
 ‘ immediately, in his Hand, return’d my An-
 ‘ swer. A Rumour has reach’d me, of your ha-
 ‘ ving written hither since, but I can find no Body
 ‘ that owns he has seen your Letters.

Dec. 16.

I am, &c.

The Committee observe, That *Johnson* is the Name by which *Kelly* went, and that he was at *Paris* the 16th of *December*, 1721. N. S. and set out two or three Days after for *England*, as appear’d by his Pocket-book.

Among the Bishop’s Papers also they observe were found two Letters from Capt. *Halstead* of *Greenwich*, who was sent to *Bilboa* to bring over the Duke of *Ormond* to *England*; and some Letters having been intercepted, sign’d *Jones* and *Illington*, the Committee proceed to shew that the Bishop of *Rockester* went by these Names.

And first they observe, That Mrs. *Barnes*, at her Examination before the Lords of the Council, own’d, that a spotted little Dog, call’d *Harlequin*, which was brought from *France*, and had a Leg broken, was left with her by Mr. *Kelly*, to be cur’d, and that this Dog was for the Bishop of *Rockester*; and *Kelly* himself made no Difficulty to acknowledge his Receiving such a Dog from *France*.

Mrs. Barnes’s
Deposition a-
bout the Dog.

And it appear’d by other Proofs, That a Dog so named and hurt, was sent over to *Kelly* from *France*, as a Present, to the Person denoted by the Names of *Jones* and *Illington*; for *Kelly*, in his Letter to *Howel* (*Glasgow*, *Dillon*’s Secretary) mentions his having receiv’d the Present, and the Accident of a Leg being broken in the Voyage; adding, *I will inform Mr. Jones soon of it, to whom I know any Thing from that Quarter will be very acceptable.* And afterwards says, *Mrs. Jones died last Week; and when the Days of*

Mourning are over, he will, I hope, be fit for Business. This Letter, they observe, was writ on *Monday* the 30th of *April*, and the Bishop's Lady died the Week before, (*viz.*) on *Thursday* the 26th of *April*.

That *Kelly*, in his Letter of the 7th of *May*, says, *Mrs. Illington* is in great Tribulation for poor *Harlequin*, who is in a bad Way, having slipp'd his Leg again before it was thoroughly well: However, his Obligations are as great as if he had come safe, which he desires you to let her know: That the Words *he*, and *his* being relative to *Mrs. Illington*, shew it was a Man that was spoken of; and this Disguise of putting *Mrs.* for *Mr.* is frequently used in the Correspondence.

Page 360.

On the 11th of *May*, *Motfield* (Lord *Marr*) sends a Letter to *Mr. Illington*, enclos'd under Cover to *Kelly*, in which, after acknowledging the Receipt of *Illington's* Letter of the 20th of *April*, he says, I did not expect so soon after to have heard of a Loss you have had since; for which I condole with you; and nothing which concerns you so near, can fail touching me, as in Friendship it ought: It is though, becoming us, as it is our Duty, to submit with Resignation, to what the just and great God thinks fit to order for us, in this vain transitory World; but you know such Things so much better than I, that will not trouble you with saying more upon it: *This seems to point out the Character of the Person to whom it was writ*: He adds, *I would fain hope that your own Distemper will soon give you Ease*; and this they observe agrees with the Circumstance of the Bishop's being ill of the Gout at the Time of his Wife's Death: Which with his being in Town, or in the Country at certain Times mention'd in several intercepted Letters, makes it highly probable, that the Bishop is intended under the feign'd Names of *Jones* and *Illington*.

That it appear'd by *Kelly's* Pocket-book, *Kelly* set out for *Paris* on the 22d of *Febr.* 1721-2, and return'd to *London* the 8th of *April* following;
That

That it appear'd by several Depositions, *Kelly* came to Mrs. *Barnes's* the 11th of *April*, at eight in the Morning, extremely fatigu'd, and went immediately to bed; That on *Thursday* the 12th, the Bishop of *Rochester* sent his Coach to fetch him, and that *Kelly* was absent in the Country till the 14th; and two other Depositions shew'd, That the Bishop of *Rochester* came to Town on *Wednesday* the 11th, and went to *Bromley* on *Thursday* the 12th of *April*.

Next follow the three Letters which were produc'd by the Committee, as the principal Evidence against the Bishop, being enclos'd in a Letter from *Kelly* himself, dated the 22d of *April*, and sign'd *James Johnson*, and directed to *Gordon*, jun. Banker at *Boulogne* (formerly Banker to the Pretender).

The first Letter was to *Chivers (Dillon)*, the Second to *Musgrave (Marr)*, and the Third to Mr. *Jackson* (the Pretender); the Letters to *Musgrave* and *Jackson* being enclos'd in that to *Chivers*: The Letter to *Chivers* is a great Part of Page 361. it out of Cypher, and with the Decyphering is in the following Words:

S I R,

20th of *April*, 1722.

I Ought to acknowledge in Form the several Papers I have successively receiv'd from you; If I were capable, at present, of doing any Thing regularly, but indeed I am not, as *Hatfield* well knows, and why I am not. Some Time must pass before I am any Way capable of Business; in the mean Time you are in the Right to press the Gentlemen concerned, by all Manner of Ways you can think of, to furnish what by being hitherto not supply'd, has rendered the Thing impracticable. They were desirous of having that Matter intirely in their own Management; and I not unwilling that they should have it, being always diffident of Success on my Part, upon Interpositions of that Kind; and therefore it gave me no concern to be so freely excus'd from any Share (as I was for a

Three Letters to the Pretender, &c. said to be dictated by the Bishop of *Rochester*.

Letter to *Chivers (Dillon)*.

' great While) in that Trouble. At last, indeed,
 ' when the Point was found upon Trial to be
 ' more difficult than they expected; I was press'd
 ' to undertake the Matter, but so late, that I
 ' did not think it reasonable for me then to inter-
 ' pose; nor can I yet undertake any Thing of that
 ' Kind, it being what (since some former Misma-
 ' nagement, wherein I was deeply concern'd) I
 ' have constantly declin'd; hoping that I might
 ' not be altogether unuseful to the Service, if I
 ' went on to promote it in my own, that is in an-
 ' other Way. I still hope so, and that a little
 ' Time, (which must be employ'd in doing no-
 ' thing but soliciting Supplies) will give me
 ' Room for entring into Measures that may be
 ' somewhat more significant than those formerly
 ' taken. This I shall endeavour, being at present
 ' perfectly tir'd, by the distracting Measures which
 ' have been taken from several Quarters, by Per-
 ' sons no Ways equal to the Work; and at the
 ' same Time not agreeing among themselves.
 ' This is all I can say at present, but that I am,
 ' with the same entire Respect and Fidelity, I
 ' ever was,

S I R,

Your most, &c.

T. Jones.

' I have communicated the Copies of Mr.
 ' Mansfield's and Jacob's Letters, which, besides
 ' the G., (whereof they had a Copy)
 ' were the only ones of those transmitted, that I
 ' was directed, or indeed thought proper so to do.
 ' Tho' I have for some Time thought that no-
 ' thing of Importance should be trusted to the
 ' Post, and am resolv'd myself not to send that
 ' Way; yet the Death of the Lord *Sunderland*
 ' makes such a Caution more indispensably neces-
 ' sary; for you may depend upon't, That those in
 ' Power here, will now enter into Measures of
 ' more

‘ more Severity and Strictness, and employ all
‘ their Diligence as well as Power on such Occa-
‘ sions.

To Mr. Musgrave.

S I R,

April the 20th, 1722.

‘ I Received from Mr. Hatfield (after a long In- Letter to Mus-
‘ termiffion of fuch Favours) a Letter which grave (Marr).
‘ was very welcome to me: I have alfo confider’d
‘ carefully what he had to offer to me in particu-
‘ lar, and intirely agree with what is propofed;
‘ but my prefent sad Circumftances (of which he
‘ has already inform’d you) will not fuffer me to
‘ be active foon, or even fet forward the Affairs
‘ entrusted with me, in fo speedy a Manner as I
‘ could wifh. The Beft is, That as I cannot act
‘ openly, fo neither is there, I think, any imme-
‘ diate Need of it, fome Time being requifite to-
‘ wards ripening Matters, in order to fix the
‘ C’d, which, if haftily begun, may
‘ be attended with Suspitions and other Inconve-
‘ niencies; but you may depend upon it, that the
‘ : s committed to my Care,
‘ fhall be forwarded in due Time, to the Persons
‘ concern’d, as alfo all fuch other : s as I
‘ judge, and at the Time I judge they will beft
‘ promote the Service. What is to be wifh’d for
‘ is, that the Perfon whom I am to act with,
‘ would come to Town; and his doing fo may be
‘ facilitated better from your Side, than by any
‘ Thing that can be done here; by that Time he
‘ comes, I hope I fhall be able to take my Part
‘ with him. I add no more now, being very un-
‘ fit to fay even thus much, but that I am with
‘ entire Refpect and Confidence,

S I R, &c.

T. Illington.

Page 362. To Mr. Jackson, under the Cover of M. Gordon
le fils Banquier a Boulogne sur Mer.

S I R,

April the 20th, 1722.

Letter to Jack-
son (the Pre-
tender).

I Am sorry to find by yours, which *Hatfield*
brought, that you know our Circumstances
on this Side so well, because that Knowledge
does not, I apprehend, give you any advanta-
geous Opinion of us; however, let it be as it
will, 'tis not fit you should be deceiv'd, and rely
on more than will be made good to you: If you
guess'd at my right Mind, I dare say it was a-
greeable to your own, and that you could not
but see thro' the Forwardness of all those unsup-
ported pretending People. Notwithstanding this
Opportunity is elaps'd, I agree with you, an-
other may offer before the End of the Year,
tho' not perhaps every Way so favourable; how-
ever, it became me to speak strongly on that
Head, especially at the Time when the :
was drawn; which was long before it was trans-
mitted; for it was kept back a great While, in
hopes that Deeds might have accompany'd
Words, and sent at last rather to justify the Wri-
ter in Respect to that Part he had undertaken,
than to push on any Design in so unprovided a
Condition. I find I was not mistaken, and am
glad I was not so, tho' every Word of that :
pass'd the View and Approbation of the Persons
concern'd; but they were to be, and shall always
be by me treated tenderly, tho' nothing shall en-
gage me to enter deep with them for the Fu-
ture. I had taken this Resolution before *Hat-*
field's Return, and am pleas'd to find that you
concur with me in Opinion. As soon as God re-
stores me to my Health, and some other melan-
choly Circumstances are blown over, which will
be as soon as there is any Occasion for me; I
will not be idle; in the mean Time give me
Leave to withdraw my self seemingly, from any
Engagement of this Kind; I shall return to it,
I don't doubt, with more Ability, to promote
the

the Work; not that I will decline any proper Occasions that may offer themselves to converse freely with the Men, and in the Manner I have been used to do; for it is fit, upon all Accounts, I should do so; but by little and little that Confidence will cool, and make Room, I hope, for somewhat of a more solid and important Nature. I dictate this in great Pain, and for that Reason, and because I am not at present in any Readiness to go further, shall add only my faithful Assurances of an entire and unalterable Respect for you.

R.

The Committee proceed to give Extracts out of Page 363. several other Letters wrote in Cypher, and in fictitious Names, as an Evidence of the Bishop's treasonable Intentions; particularly a Passage out of a Letter dated the 1st of May, from *Dillon's* Secretary to *Kelly*; wherein the Secretary acquaints *Kelly*, *That Mr. Jones (the Bishop) cannot take a better Time to have himself fitted with an easy Saddle, there being a Number of Saddlers idle in France at present, who, in Case of Wars would be so very busy, there would be no coming at them.* And they observe that *Neynoe* said, Saddlers in *Kelly's* Cypher stood for *Irish* Soldiers; and in *Plunket's* Cypher, Saddles stand for Regiments, and Girt for one hundred Men.

That on the 10th of May, three Days after the Encampment, *Kelly* writes to *Dillon's* Secretary, *That it was reported the King had absolutely refused to put off his Journey, and intended to set out next Month; and that if they could then compass Barrels enough, the sooner the Wine comes, he believes the better; That Jones promised to be a good Customer, and that he hoped Hacket and Jones would give them a finishing Stroke.* Page 364.

They observe, That Wine was explained by *Neynoe* to mean Invasion; Barrels in *Plunket's* Cypher meant the Army, and Vines 1000 Men. That on the 19th of May, *Kelly* being taken into Custody, and about the 7th of June admitted to Bail,

Bail, on the 11th of *June* he wrote an Account of his Examination to one *Gerrard*, whom they believed to be Sir *John D'Obryan*, a Person that *Kelly* own'd was employed by *Dillon* to write for him : In which Letter, *Kelly* says, He was chiefly question'd about a little Dog he got from *France*, and about five or six cant Names, which were *Illington*, *Jones*, *Cane*, *Howell*, *Quitwell* and *Hacket*; and that whoever *Illington* was, he was the Person chiefly struck at.

That on the 18th of *June*, *Kelly* wrote to *Dillon* that it was absolutely necessary to make no more Use of their present Account-Book, since those that have got Part, may by the same Method have got the Whole; and that it will be highly improper for him to meddle with Business, at least for some Time.

And from this Time forth the Committee observe, that the Name of *Jones* and *Illington* are no more heard of in the intercepted Correspondence : And that *Thomas Carte*, Clerk, takes up the Management of the Bishop's Correspondence in the Room of *Kelly*, who writes but seldom afterwards : And from the Time of *George Kelly's* being first taken up, the Bishop of *Rochester* is described by the Names of *Rig* and *Weston*; particularly in a Letter of the 7th of *June*, where *Dillon's* Secretary writes to *Carte*, acknowledging the Receipt of a Letter from him on the 28th of *May*, which was soon after *Kelly's* being taken up; wherein he expresses great Satisfaction, that the late Rumours of a Plot had not occasioned a total Interruption of Commerce, nor obliged any of their Correspondents to go aside; adding, that *Dillon* desir'd to be most kindly remember'd to his good Friend Mr. *Weston*, for whom he was in the greatest Concern, on Account of a Story, that his Clerk had been laid up for Debt; but that he hopes *Carte's* next Letter will put him at full Ease in this Matter.

This the Committee observ'd had plainly a Reference to *Kelly's* being taken up; and his Relation
of

of Clerkship to the Bishop was explained by what went before.

That on the 14th of *July*, *Dillon* wrote to *Weston*, under a Cover to *Carte*, and desir'd he would admit one *Skinner*, (*Stanley*) who was sent over from *France*, to receive his Commands; and on the 26th of *July*, *Kelly* wrote Word, that *Rig* and *Skin* had been together: And the same Day *Stanley* writes to *Dillon*, That he had been with the Correspondent to whom the Letter of Credit was sent.

From whence it appeared, that the Bishop went under the feigned Names of *Rig* and *Weston*.

They observe, That on the 26th of *July*, *Kelly* Page 366. wrote to *Dillon*, acquainting him, that they were certainly betray'd by Somebody entirely in the Secret, who had given such a Light into all their Affairs, that the most minute Circumstances were perfectly found out; That therefore he must caution him, as he is requested, to be very careful who he converses with, even at *Paris*, without excepting any one.

On the 30th of *July*, *Carte* writes to *Dillon*, That he had the Honour of introducing Mr. *Stanley* to Mr. *West*, who received him in the best Manner, and assured him of his Readiness to assist him in what he could. Mr. *St.* was much pleased with him, but did not engage him to solicit in his Arrack Affair, which yet was of the greatest Consequence to him, and Mr. *W.* was most capable of serving him in it, because in the Esteem of all the Commissioners, in whose Power it was to relieve him in the Case: And Mr. *W.* would do it effectually, if engaged in it; so Mr. *Stanley* desir'd him to request the Favour of Mr. *W.* in a Letter from him to Mr. *Stanley*, which he was sure would fortify the good Inclinations Mr. *W.* had already to serve him, and effectually engage him in the Thing.

This Original Letter was stopp'd, and the Committee were inform'd, was of *Carte's* Hand writing; and they observe, that the principal Direction of the Conspiracy under all the Disguises of Stock, Page 367.
Manuscripts

Manuscripts and Arrack, was submitted to the Bishop's Judgment, on which it is often said they entirely rely.

The Committee proceed next to produce further Evidence of *George Kelly's* being concerned in this treasonable Correspondence: They find that *Neynoe*, in his Examination, says *Kelly* own'd his having been at *Avignon*, when the Pretender was there; and that the last Winter, among other Papers he brought over one in *French*, written by *Dillon's* Secretary, entitled, *Reasons humbly offer'd to Cardinal Dubois, proving that the Establishing the House of Stuart on the Throne of England preferably to that of Hanover, was the Real Interest of the Crown of France*. That this Piece being brought to *Neynoe* to be translated out of *French*, he advis'd against the Publishing of it, because, as it was written by a Papist, it turn'd much on the Advantages that would accrue to Popery.

That *Kelly* told the said *Neynoe*, that 100,000 *l.* nay 50,000 *l.* would be sufficient for bringing in the Pretender, and he would warrant that Sum should be found: That whenever there happen'd to be a Stand made for the Pretender, great Numbers of Volunteers from *France* would appear for him.

John Maylone, formerly Servant to Mrs. *Barnes*, who waited on *George Kelly* in his Lodgings, had deposed, That *Neynoe*, *John Plunket*, (now in Custody) *Carte*, and *Dennis Kelly*, often visited *George Kelly*.

Then the Committee proceed to prove that *George Kelly* was intended by the several fictitious Names above-mentioned, as by the Clerks of the Post-Office that opened his Letters, and by *Malone*, who swore they believed those Letters were *G. Kelly's* Hand-writing. They repeat also a great many Passages in those Letters, and other Evidence they make Use of in their Charge against the Bishop of *Rocheſter*, which for that Reason, I design'dly omit here; but shall take Notice however of other material Extracts of Letters
and

and Evidence produc'd to form the Charge against *George Kelly*.

On the 21st of *April* 1722, *Dillon's* Secretary wrote to *Joshua Vernon* (another of *Kelly's* Names) congratulating his safe Return, and acquainted him that his first Letter was very pleasing to Mr. *Lane*, (Lord *Marr*) who waited with much Impatience for those of *Monday*, hoping to receive a more particular Account of his Bills, which he daily becomes more press'd for: The Prospect of a good Vintage encreasing by late Showers which had dropp'd there, and raised the Spirit of the Labourers; adding, that it seemed more plain that on Advances of Ready Money, good Bargains may be proposed; ——— That *Dillon* advised the Money, which *Kelly* mention'd in *Clynton's* Hands, should be equally divided between *Medley* (Duke of *Ormond*) and the Pretender: Then he tells *Kelly*, that *Farmer* and *Family* are well, and that Mrs. *Hughes* became so very uneasy, she was dismiss'd, and is on Return.

The Committee observe on this Passage, that *Farmer* must mean the Pretender, because Mrs. *Hughes* was Nurse to the Pretender's Child, and was on her Return to *England* at this Time. They observe also from this Letter, that *Kelly* was employed by *Marr* and *Dillon*, in soliciting Supplies for the Service of the Conspirators; and that he had acquainted them of a Sum of Money lodged in the Hands of one *Clynton*, which they advised should be equally divided between the Pretender and *Ormond*; but whether *Kelly* was considerable enough to have this Advice sent him for his own Direction, or was only to be the Chanel for conveying it to some other Person of greater Distinction, they could not determine.

That *Kelly* sent the Bishop's Pacquet of Letters, under Cover, to *Gordon* at *Boulegne*, the 23^d of *April*, as intimated already, with Orders to deliver it to a tall black Man, who would call for it; which Person, in other Letters, was called *Crewe*, and by concurrent Proofs appeared to be *James Talbot*, an *Irish* Papist, concerned in the *Preston* Rebel.

Rebellion, and then in the *Spanish* Service: That *Kelly*, at his Examination, confessed his being intimately acquainted with *J. Talbot*; and *Dillon*, in his Letters to *Kelly*, acknowledged the Receipt of the Pacquet by *Talbot*, who himself also writes to *Kelly*, *That Mr. Gordon gave him the Pacquet at Boulogn, which he delivered safe on Monday last, as directed.*

On the 7th of *May*, *Kelly* wrote to *Dillon*, That *Illington* was glad to hear he had receiv'd his Letters by *Crew*.

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Dillon's Secretary, on the 24th of *April*, wrote *Kelly* a long Account of one *Xoland* (*Nicholas Wogan*) who was to command one of the Ships that was to be hired of some *Sweedish* Merchants at *Cadiz*; which agreed with *Mr. Crausurd's* Letter of the 25th of *July* 1722, *N. S.* that *Nicholas Wogan* was to have the Command of one of the Ships hired of the *Swedes* at *Cadiz*.

On the 30th of *April*, *Kelly* answers *Dillon's* Letter, and wishes his Chief may succeed in his Journey, (which Chief the Committee apprehend to be the Pretender) adding, that *Hore* (*Sir H. Goring*) is impatient to have a more satisfactory Account from your Side, and hopes there may be Room now to expect it, since there was Nine remitted by *Repney*. He will soon, he tells me, send you two more, which with the 12000 Arms provided by *Mansfield's* (*Ormond's*) Relations, and which are now ready to be sent wherever designed, and paid for too, will, he hopes, bring Matters to some Prospect of bearing.

The Committee observe, That this Impatience of *Hore*, falls in Point of Time, with the Account Lord *Orrery* gave *Layer*, that Lord *North* and *Grey*, *Sir Harry Goring*, Lord *Strafford*, and others, were going to do a rash Thing in Favour of the Pretender; That it likewise agreed with the Letter to *Dodsworth*; That the Hopes given by *G.* to expect a great Sum, and by *N.* that he had raised 20,000 *l.* induc'd *Ormond* to supply *Morgan*, and to make other necessary Provisions; Part of which appeared to the Committee to have been

been the 12000 Arms, mentioned in *Ormond's* Letter of the 27th of *April* above recited.

Kelly adds, That he hears *Ormond* continues still upon the old String, that he can get no Officers, and says, I wish the Sending over *Hore's*, &c. Commissions may not do more Hurt than Good; for that Affair is already become no Secret, and may pique some Friends, as well as put ill Wishers on their Guard.

The Committee observe from this last Passage, That the Scheme for the Insurrection was at that Time in such Forwardness, that Commissions were actually sent over; and that confirmed the Account also of the late Duke of *Ormond's* being expected with Officers and Arms to support it.

In a Letter from *Dillon* to *Femison*, inclosed in one to *Kelly* of the 2d of *May*, *Dillon* acquaints *Femison*, (an intimate Friend of *John Plunket's*) That Mrs. *Freeman* intends to bring her Cause to a Trial, as soon as possible, and that he believes Mr. *Abel's* Departure will be no Detriment to her Pretensions. Which Passage, compared with other Letters, the Committee observed made it evident, that by *Freeman* was meant the Pretender, and by *Abel* his Majesty, and confirmed the Design of an Insurrection in the Beginning of *May*——
Dillon afterwards desires *Femison* to assure his Cousin *Rogers* (*John Plunket*) of his best Respects, and that he depends on his friendly Offices, &c.

On the 10th of *May*, *Kelly* acquaints *Dillon's* Secretary with the Discoveries made by the Government; but assures him, at the same Time, that the King will go abroad next Month, adding, If you can then compass Barrels enough, the sooner the Wine comes, I believe the better.

That *Kelly* was taken into Custody the 7th of *May*: And one of the Messengers who seized him, deposed, That when he was seized he offered to draw his Sword, but was prevented. That the other Messenger being called out of the Room to rescue one of their Companions, who was in Danger of being murder'd in the Street, *Kelly* called

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called to the People of the House to lock the Door; and taking up his Sword, which had been laid by in the Window, drew it, and made a Pass at the Messenger, who verily believed he did it with an Intention to murder him; That he afterwards made a second Pass, and swore if he came in again, he would stab him; and said, that if the Secretary of State, who signed the Warrant, had been there, he would have done the same: That the Messenger going out to call for Help, and returning within a Minute, was told, that *Kelly* had in the mean Time burnt one of the Papers seized upon him.

This desperate Attempt on the Messenger the Committee conceive to be a sufficient Argument of his Guilt; but notwithstanding his Care to destroy his Papers, one had been found upon him, which they thought sufficient to prove him concerned in the said treasonable Correspondence; which was a List of Directions in the following Words.

*To Anthony Saunders, Esq; or Mr. Joshua Vernon, at Will's Coffee-house, Covent-Garden.——
To Mr. James Baker, or Arthur Stevens, Esq; at Burton's Coffee-house in King's street St. James's, London.*

They observe that most of the abovesaid Letters came directed to him by the three first of these Names; and a Person having been employed to watch at *Burton's* Coffee-house, deposed, That on the 14th of *May*, a Letter directed to Mr. *James Baker*, being left there by the Postman, *George Kelly* came in and took the same, open'd and read it, and went out of the House (with a Letter in his Pocket) to Mrs. *Barnes's*.

Kelly being examin'd concerning this and other Letters, said, they were for *James Talbot*, who was then under a Cloud; but the Committee observe, that *James Talbot* was then in *France*.

That *Kelly* own'd his going to *France* the Beginning of the Winter 1721, and the Spring following, on Account of Transactions in the Stocks; That he was desir'd by a Brother of the said *Dillon's*

lon's to carry over to General *Dillon* an Act of Parliament, relating to the Estate of that Family, which was the only Paper he carried : That he saw *Christopher Glascock*, (or *Glasgow*) who is a Captain in *Dillon's* Regiment, and knew Sir *John D'Obryan*, *Dillon's* Secretary ; and also had seen *Colin Campbell* of *Glenderoule*, at Coffee-houses.

—— That in his Examination before the Lords of the Council, he own'd his having receiv'd Letters from one *Glasgow* at *Paris*, who went by the fictitious Names of *Howell*, *Quitwell*, *Querry*, *Bonneville*, by which Names, *Dillon's* Secretary subscribed his treasonable Letters.

They observe that *Kelly* denied his ever having received a Letter by a fictitious Name, but he seemed to have prevaricated grossly with the Committee ; for at his first coming in, before he would make any Answer, he insisted that nothing he should then say, should be made Use of against his own Life, or as Evidence against any other Person ; and upon these Conditions he promised to answer directly to all Questions. But the Committee not thinking it proper to agree to such Conditions, he denied his knowing any Thing of the Conspiracy ; which the Committee apprehended to be inconsistent with the Conditions he had insisted on ; and he own'd at length, that the Promise they had made him was not satisfactory : However, he pretended he could not have answered their Questions in any other Manner, if their Promise had come up to the Conditions he insisted on.

On the 11th of *June*, a few Days after his being out on Bail, he wrote a Letter to *Gerrard*, (supposed to be *Dillon's* Secretary, Sir *John D'O'brian*) wherein he says, ' That he was bailed the ' *Thursday* before, and that the Judges were never ' known so severe in any Case of the like Kind ; ' That most of the Questions asked him at his ' Examination, were about a little Dog which he ' got from a Surgeon, when he was last in *France* ; ' That they mentioned no Persons to him but General *Dillon* and one Mr. *Morgan* ; That to the ' first, he owns he is a little known, having car-

' ried over an Act of Parliament to him that con-
 ' cerned his Family ; but that the latter he never
 ' saw ; That Lord *Carteret* had a List of five or
 ' six cant Names, as he called them, which were
 ' *Illington, Jones, Howell, Quitwell* and *Hacket*,
 ' and what he never heard of before ; that how-
 ' ever, they would perswade him he knew some
 ' Persons that were meant by those Names, which
 ' he vows he never did ; and whosoever *Illington*
 ' is, he was the Person principally struck at. That
 ' he is not at all satisfied with the Behaviour of
 ' his Friends ; That *Gerrard's* old Friend *Rig* in-
 ' deed offer'd all that could be expected of the
 ' poor Man ; but others, in whose Power it was
 ' to do more, shew'd no Concern at all for his
 ' Misfortune. That he lay ten Days in the closest
 ' Confinement, without so much as a Message from
 ' any of those that he depended most upon ; That
 ' it is well he had no Secrets to reveal, since such
 ' Usage might provoke a passionate Man ; and that
 ' the World is pretty well convinc'd that he had
 ' not, since no Persons seem'd to be the least ap-
 ' prehensive that he could do them any Mis-
 ' chief.

' That this shews what the Friendship of some
 ' People is ; but whilst there is one righteous Per-
 ' son, we must, for his Sake, overlook greater
 ' Misfortunes.

' That he is very well, and under no great Con-
 ' cern for any Thing, as to himself, but the Ex-
 ' pence, having more than his own to answer.'

He concludes with desiring *Gerrard* to direct
 under Cover to Mr. *Andrews*, at the *Dog and*
Duck in *St. James's Street*.

Your Committee find, that after this Time,
 several Letters did come from *France*, directed to
 Mr. *Andrews* at the *Dog and Duck*.

On the 18th of *June*, *Kelly* wrote to *Crew*,
 (*James Talbot*) giving him an Account of his
 Misfortune, and his Design to retire from Busi-
 ness.

He sends his Service to all Friends, particularly
 to Sir *John* and *Christy*, (Sir *John D'Obryan* and
Christo-

Christopher Glascock) and desires *Talbot* to tell the latter, he must find out some other Address for him to write by, since he has good Reasons for not using the former, which have prevented his Writing to him for ten Days pass'd; and that if it were to a *French* Person, it would be so much the better.——And the Committee observe, That soon after a *French* Direction to Mr. *Masoneuve* was sent over to *Kelly* by *Christopher Glascock*, which *Kelly* made Use of for some Time; and the original Letter in *Kelly's* Hand, stopp'd at the *Post-Office*, is so directed. Page 372.

Kelly concludes his Letter to *Crew*, with desiring him to direct to him by the Name of *Wilkins*, at *Will's* Coffee-house: And the Committee observe, That not long after a Letter came so directed, and signed *J. T.* which was stopp'd.

On the 28th of *June*, *James Talbot* wrote to *Kelly*, congratulating him on his Enlargement and Behaviour, and expressing his Surprize that he should at such a Juncture have Reason to complain of want of Friends.

The same Day *Glascock* wrote to *Ireton*, under Cover to *Andrews*; and as it appear'd, *Andrews* deliver'd these Letters unopen'd to *Kelly*; This, with the Matter the Letters contained, abundantly manifested that *Ireton* was another of the Names that *Kelly* went by——This Letter takes Notice, that *Kelly's* Letter to *Chitwood* (another Name for *Dillon*) came safe, and says, that what he had recommended, in Relation to the new Book of Accounts, would be observed.

He goes on and says, That *Ormond* had expressed much Concern for what had befallen *Kelly*——Desires to know the Particulars of his Case, and to know what is wanting for paying off the Doctor's and Apothecary's Bills; acknowledges the Receipt of a Letter from *Rogers*, and enquires after *Femison*.

On the 28th of *June*, *Kelly* writes to *Talbot* of the Neglect that had been shewn him, and the Reasons that he had to decline any farther

ther Traffick with the Merchants here: He says, 'If *Talbot* perceives no Likelihood of a sudden Change for the better, he must retire to some cheap Part of the Country, if *Dillon* allows of it;' expresses his great Obligations to *Dillon*, and his Readiness to execute any private Commands of his; and adds, (what appears to your Committee very remarkable) 'If I were in a Condition to bear the Weight of publick Business, *Dillon* should never be at the Trouble to employ another, but that he is heartily sorry *Dillon* himself has done it so long for ungrateful People on this Side; says, he never intended to trouble his Friends on this Side on his own private Account; but publick ones of this Nature are what he thinks they ought to take Care of, since they are best able to do it, and expect the best Returns for it.'

Glascock writes to *Kelly* on the 4th of *July*, That *Dillon* intended to have sent him a Letter of Credit by the Post drawn on Mr. *Harrold*, but kept it back till he heard from him, for fear, by Removal into the Country, or by any other Accident, it should be lost: And on the 11th of *July*, *Glascock* repeats this, and shews his Suspicion that the Letters to *Andrews* had miscarried: He acquaints *Kelly* also with kind Expressions he had seen from Dr. *Freeman* and Mrs. *Malcom*, (the Pretender and his Spouse) in Relation to *Hawksby's* first Operation in his late violent Distemper (and the Committee suppose *George Kelly* to be meant by *Hawksby* here, tho' in other Letters it stands for King *George*); for the Pretender's Words mentioned in this Letter are as follows: --- --Hawksby's steady and resolute Behaviour in the first Operation, answers the good Opinion I have long had of him: I am fully perswaded that all the Surgeons will do hereafter, shall not be able to alter his Temper; and I hope he will come off with Patience and a short Confinement, by which his Health will become more perfect and satisfactory to his Friends. And Mrs. *Malcom*, the Pretender's

der's Spouse, says, *I am truly glad that honest Hawksby is recovered, for I take him to be a very valuable Man.*

Kelly writes to *Glascock* on the 2d of *August*, That he had receiv'd the Bill of Credit, that his Letter of Licence (Day of Appearance in the King's Bench) was not out till the End of *October*; and that his Creditors threaten then to shew him no Mercy; That he expected to have sent the State of their Accounts before now, but that the Gentleman, who was to carry them, met with an Accident the other Night, and then sends a long Account of *Dennis Kelly's* being taken up.

On the 6th of *August*, he sent the same Account to *Dillon*, and mentioned the great Terror the Guards were under from Informers-----The same Day he sent *Glascock* an Account, that *Sample*, *Cotton* and *Campbell* were taken up; That there were Reports of one *Sir Harry Goring's* being taken up, and of Forces sent for the Lord *North and Grey*, Lord *Strafford*, and other Persons of Quality; but that he finds there is no Truth in them. Page 374.

Kelly writes to *Glascock* on the 9th of *August*, That *Den* is come to Town, and behaves like a Friend; but that *Rep.* is still in the Country, and so is *Ho.* and that the latter had earnestly desired *Kelly* to go to him for a few Days, which he had Hopes of doing, but intended to make but a short Stay.

(The Committee had Reason to believe, that by *Ho.* was meant *Hore*, by an Entry in *Kelly's* Pocket-Book.)

Kelly writes again to *Glascock* on the 13th of *August*, That he intends to visit *H.* who being at a good Distance in the Country, he could not return under four or five Days (which agreed with the Circumstance of his going down to *Horndean* near *Petersfield*) adding, What would you advise poor *Trotter* (*Carte*) to do; he is ready to take a Voyage any where, and is, you know, an honest and fit Person for that Business.

The Committee observe, That the last Letter was written on the Day his Majesty issued his Proclamation for apprehending *Carte*; wherein it is set forth, that he was fled from Justice.——

Glascock adds, That Mrs. *Musgrave* had receiv'd Advice from her Father, that she was not to expect a Farthing of the Allowance due to her for the Time past, or to come; which *Allen* had procured a Seizure of, on Account of her Husband's Debts and Mismanagement.

The Committee believe, That this Passage relates to the Stopping a Pension, which his Majesty, on the Application of the late Lord *Marr*, and a Promise of Services, had allowed him: And they reflect with Indignation on the Ingratitude of such Persons, who while they were subsisted by his Majesty's Bounty, were labouring to deprive him of his Crown and Life.

Three Days before the Bishop was taken up, *Kelly* writes to *Glascock*, (the Original of which Letter was stopp'd, and sworn to be *Kelly's* Hand) and says, Your Cousin *Ireton* and *Wilkins* are both gone into the Country, and earnestly beg the Favour of you not to write to them any more, for which you will soon know the Reasons.

Kelly in a Letter to *Dillon* of the 30th of *August*, having giving a very long Account of the Circumstances of the Bishop's being taken up and examined, and committed to the *Tower*, says, By this, you are satisfied of *the Reasons of my late Silence*. And the Committee observe, That these Passages shew the Connection which *Kelly* thought there was between the Bishop and himself.

On the 14th of *September*, *Glascock* writes *Kelly* Word, That Mrs. *Hore* (Sir *H. Goring*) was at *Rouen*: And on the 17th, that the Book of Accounts sent by *G.* was come to hand; so that they were in a Condition to settle Accounts with *Kelly*: From which Time the Committee observe, they made Use of a new Cypher of Names, and new Directions to their Letters; and believe, that *Kelly* sent over a new Cypher, and a new List of Directions, to *France*, by Sir *Harry Goring*; and that

that in this new Cypher, the initial Letters of the real Names, were always prefix'd to the fictitious one; which last are frequently varied, but the initial Letter never: ——— For Instance, The Person who carried over the Cypher and List of Directions from *Kelly*, is in some Letters called *G. Sampson*, in others *G. Stephenson*, *G. Saunders* and *G. Sandford*, and appears to be the same with *Mrs. Hore* (*Sir H. Goring*.)

The Committee observe further, That all the Names made Use of in the new Directions, were enter'd by *Kelly* in the Pocket-Book that was taken upon him when he was last apprehended, with such Marks and Observations upon them, as needed no great Explanation.

Kelly in a Letter to *Glascock* of the 27th of September, complains, That he has not heard a Syllable from *D. Gainer*, (*Dillon*) or *G. Roberts* (*Glascock*) since Mr. *G. Sampson* (*Goring*) went; which had been no small Detriment to some of their Friends; adding, The Term being at hand, we shall be much at a Loss how to manage without their Advice; which *G. Sampson* promised to send a speedy Account of. He then gives an Account of the Lord *North*'s being seized at *Portsmouth*; and concludes: I must now plainly tell you, that I am afraid your Cousin *N. Clifton* is in a very bad Way; a Person he lately employed to compound some *South-Sea* Bargains, has not been true to him, for his Creditors have actually put him in Gaol, and except you can contrive to send him some Relief from what Effects he put into your *Mississipi*, his Confinement will prove fatal to him; you know his Worth, for Heaven's Sake, do not forsake him.

This Letter being written the Day the Lord *North* was brought up in Custody, the Committee supposed he was meant by *N. Clifton*, and that the Person said to be false to him, was either *Lynch* or *Layer*.

Glascock writes to *Kelly* on the 20th of October, That *D. Gayner* (*Dillon*) thinks very seriously on the Commissions with which *Kelly* had charged him

him for his Friends, and does not refuse to employ his whole Credit in that Affair; but that one single Article had consumed the Bill of Exchange which *N. Cleaton* sent.

The Commons here suppose, That by *Cleaton* was meant Lord *North*, who they suggest had formerly sent over 20,000 *l.* to *France*.

In the same Letter, *Glascock* takes Notice of Goods sent by *Contade* and *Lunelle*, for *Kelly's* Use——Which the Committee suppose were the Pretender's Declarations, which came by that Post, or the next, under Blank Covers, to *Contade* and *Lunelle*, at *Slaughter's* Coffee-house, agreeable to the *Memorandum* in *Kelly's* Copy-Book.

Kelly being examined concerning the Names in his Pocket-Book, said, They were the Names of Persons, with whom he had transacted Stock Affairs in *France* several Years ago. He own'd he had seen Letters at *Slaughter's* and *Sturgis's* Coffee-house, directed by some of those Names, but that it might easily happen that there might be Persons in *England* of the same Names with others in *France*; and that it was his Misfortune Letters should come directed by those Names. He insisted, that his Pocket-Book, though taken upon him, was an old one that had lain by neglected these three Years: Yet your Committee observe the *Memorandums* in it were of a late Date, and contained a particular Account of the Time of his Journeys to and from *France*, and of the Days on which he and *Dennis Kelly* and the Bishop of *Rocheſter* were taken into Custody.

Dennis Kelly's
Papers.
Observations
upon them.

The Committee next proceed to lay before the House such Particulars, as they had collected from the Papers of *Dennis Kelly, Esq;* who appeared to have acted in Concert with *George Kelly*, and behaved himself with the like Obſtinacy on his Examinations.

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The Matters which they find him principally concern'd in by the intercepted Letters, are the Remittance of the Bill of Exchange sent over from the Person called *Refney*; his being present
at

at a Consultation with the Persons called *Rep, Ho, and Den*; and his being to carry over to *France* their final Answer, together with a new Cypher List of Directions, and other verbal Instructions, from *George Kelly*, for *Dillon, Glascock, and Talbot*; but the Commons dropping the Prosecution of *Dennis Kelly*, I shall not trouble the Reader with the Particulars of the Evidence they had prepar'd against him.

John Sample was also apprehended and examin'd by the Committee, as having been concern'd in this treasonable Correspondence; but he made his Escape before his Examination was perfected. *John Sample.*

Mrs. Spelman's Examination is also mention'd in the Report, through whose Hands pass'd several Letters from *George Fernegan*, an Agent of the Pretender's abroad, to the Duke of *Norfolk*, and others from the said Duke to *Fernegan*; but the Prosecution of the Duke being afterwards dropp'd, it is presum'd the Proofs against him were not deem'd satisfactory to the House. *Page 378. Mrs. Spelman. Duke of Norfolk.*

The Committee grounded their Charge against the Duke, upon a Letter written to him from *France* by *Fernegan*, the 12th of *July*, 1722. wherein *Fernegan* sends him Word, that the Secret (the Plot) was communicated to *K. George* by the Regent, and laments the Impossibility of Arming themselves with sufficient Prudence against such a Conduct.

And another Letter of *Fernegan's* of the 2d of *August*, wherein he tells the Duke, That the Regent's Conduct was to be ascrib'd to a politick Necessity, and they were now satisfied he was in their Interest, and disposed every Thing to undertake the Work, which, according to some Accounts would be put in Execution within two Months. *Page 379. Fernegan.*

Fernegan, in one of his Letters to *Mr. Harvey of Combe*, says, *The Regent plays a Game apart, and confides in none but Britain, and has sacrific'd us to make a firm Friend of King George. The late Disappointment in our Affairs has given a surprizing Power to the Court of France: They* *Harvey of Combe. Page 380. Silence*

silence all other Princes with Regard to us. None now dare look that Way, or undertake the least trifling Service in our Favour.

To this Letter Mr. *Harvey* sent an Answer on the 20th of *July*, which was stopp'd; but it contain'd such low and virulent Scandal, say the Committee, that they did not think fit to trouble the House with an Extract from it.

Q.

The Plot extends to Scotland and Ireland.

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The Committee observe, That this treasonable Conspiracy extended to *Scotland*, That Brigadier *Mackintosh* and the Lord *George Murray*, were actually in *Scotland* at this Time; and they suggest, that the *Scots* were actually enter'd into an Association in Favour of the Pretender, and promis'd to raise 22000 Men on the Duke of *Ormond*'s appearing amongst them; but give no Instances of any Plot concerted in *Ireland*.

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On the 8th of *March*, the House of Commons took the said Report into Consideration, and came to the following Resolutions, *viz.*

Resolutions of the Commons upon the Report of the Committee.

‘ That upon Consideration of the Report, and
 ‘ the several Papers and Examinations relating to
 ‘ the Conspiracy, it appears to this House, That
 ‘ a detestable and horrid Conspiracy has been
 ‘ form'd and carry'd on by Persons of Figure and
 ‘ Distinction, and their Agents and Instruments,
 ‘ in Conjunction with Traitors abroad, for invading these Kingdoms with foreign Forces; for
 ‘ raising Insurrections and a Rebellion at home;
 ‘ for seizing the *Tower* and City of *London*; for
 ‘ laying violent Hands upon the Person of his most
 ‘ sacred Majesty and the Prince of *Wales*, in order
 ‘ to subvert our present happy Establishment in
 ‘ Church and State, by placing a Popish Pretender upon the Throne.

‘ That it appears to this House, That *John Plunket* has been a principal Agent and Instrument in the said horrid and detestable Conspiracy, and has carry'd on several treasonable Correspondences to procure a foreign Force to invade these Kingdoms, and to raise Insurrections and a Rebellion at home, and was engaged with others in the villainous and execrable Design of
 laying

‘ laying violent Hands upon his Majesty’s most sacred Person.

‘ That it appears to this House, That *George Kelly*, alias *Johnson*, has been a principal Agent and Instrument in the said horrid and detestable Conspiracy, and has carry’d on several treasonable Correspondences to raise Insurrections and a Rebellion at home, and to procure a foreign Force to invade these Kingdoms from abroad.

‘ That it appears to this House, That *Francis Lord Bishop of Rochester* was principally concern’d in forming, directing, and carrying on the said wicked and detestable Conspiracy for invading these Kingdoms with a foreign Force, and for raising Insurrections and a Rebellion at home, in order to subvert our present happy Establishment in Church and State, by placing a Popish Pretender upon the Throne. In Pursuance of these Resolutions it was ordered by the House, That Bills of Pains and Penalties should be severally brought in against the said *John Plunket*, *George Kelly*, and *Francis Lord Bishop of Rochester*.

March 14. The House of Commons came to a Resolution to communicate their Report to the Lords, with the Letters and Papers relating to the said Conspiracy.

March 16. The House of Lords chose the following Peers to be a Committee to inquire into the said Conspiracy, viz.

The Duke of <i>Dorset</i> ,	The Lord <i>Lonsdale</i> ,
The Duke of <i>Montrose</i> ,	The Lord <i>Torrington</i> ,
The Earl of <i>Scarborough</i> ,	The Bishop of <i>Lincoln</i> ,
The Earl of <i>Lincoln</i> ,	The Bishop of <i>Salisbury</i> .
The Earl of <i>Ilay</i> ,	

This Committee made their Report on the 23d of *April*, 1723. And first they declare themselves fully satisfied, That a detestable Conspiracy had been form’d and carried on for soliciting a foreign Force to invade these Kingdoms, for raising a Rebellion, and inciting Insurrections in *London*, and

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Committees.

and other Parts of *Great Britain*, and for laying violent Hands on his Majesty and the Prince of *Wales*, in order to destroy our Religion and Constitution, by placing a Popish Pretender on the Throne.

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And as the Commons, by their extraordinary Vigilance and Application in detecting this Scene of Iniquity, had awaken'd the just Resentment of an injur'd Nation, it must excite a proportionable Zeal in their Lordships, for bringing the Authors of these wicked Designs to such exemplary Punishment, as might be a lasting Admonition to Posterity, That Artifice and Disguise could no more lessen the Danger than mitigate the Guilt of Treason; and that they act under a fatal Delusion, who hope to abuse the Lenity of our Laws, to the Ruin of our Constitution.

The Committee thinks it a strong Confirmation of the Truth of the Commons Report, That several Observations which were there advanc'd as probable Conjectures only, have been since verified by fresh Discoveries arising from Papers lately referr'd to their Lordships.

The Intelligence sent by Colonel *Stanhope* and Sir *Anth. Westcombe*, in Relation to the Pretender's Ships under *Morgan*, and the Explication given by the Commons to several fictitious Names, were very much illustrated and confirm'd by Papers taken in the *Revolution* (at *Genoa*) and by Examination of the Prisoners belonging to the said Ship.

It appear'd by them, that *Morgan*, who went by the Name of *Walton*, and *Gallwey*, who went by the Name of *Gardiner*, with others commanded by them, had for several Years been employ'd in fitting out Ships under *English* Colours, to attend the Motions of the Pretender, stil'd in several Letters, their King and Royal Master; That these Ships were paid partly by Persons in *England*, partly by *Waters*, the Banker, at *Paris*, and partly by the Duke of *Ormond*; That one of these Ships, in the Year 1719, was sent by *Morgan* to the *Groyne*, to bring the Duke of *Ormond* over

over to *England*, *Morgan* and *Gallwey* being promis'd 50000 l. by Friends in *England*, for this Service; That others of their Ships lay hovering on the Coast of *Britany*, from 1718 to 1721, expecting to be employ'd by *Dillon* or *Goring*, in what they call'd their Home Trade; but then despairing of Employment, they engaged themselves in the Service of the *Swedish Madagascar Company*; but this Project also failing, *Morgan* waited on the Duke of *Ormond* at *Madrid*, and received of him 12000 Pieces of Eight, for fitting out the Ships *Lady Mary* and *Revolution*, for the Pretender; and soon after *Morgan's* Return to *Cadiz*, the Arms and Ammunition, which had been prepar'd for the *Madagascar* Voyage, consisting of 2000 Muskets, 2000 Bayonets, 1000 Carbines, 400 Barrels of Powder, with Match, Flints, &c. were consign'd to *Morgan*, and by him put on board the Pretender's Ship, the *Lady Mary*; in which *Morgan* and several *Irish* Officers sail'd from *Cadiz* the latter End of *April*, 1722. and went first to *St. Antonio*, and then to *St. Andero* in the Bay of *Biscay*: The Sale of the said Arms to *Morgan* being prov'd by *Gustavus Bohr*, formerly a Captain in the *Swedish* Service.

Morgan's Son own'd to the Committee, that Page 384. his Father went to *Madrid*, when the Duke of *Ormond* was there, and receiv'd Bills for fitting out the said Ships, but he could not tell from whom.

The Sailors and *Morgan's* Son acknowledged, that one *Hilton* commanded a Ship under *Morgan*; That *Hilton's* true Name was *Nicholas Wogan*; and it appear'd that *Nicholas Wogan's* Ship came to *Morlaix* in *Britany*, in *July*, and expected *Morgan's* other Ships to have followed him. And that they understood in *Spain*, the Duke of *Ormond* was to have landed in the West of *England*, with *Irish* Officers and Arms.

That the Sailors, while they lay at *Cadiz*, finding the *Madagascar* Voyage to be dropp'd, refus'd to do their Duty: That thereupon *Gallwey* assur'd them he was going to *Gibraltar*, in order
to

to clean the Ship; but having got them under Sail, and satisfied them about their Wages, they proceeded to the Bay of *Biscay*; That they put in at *St. Antonio* to take *Morgan* on board, and then join'd the *Lady Mary* at *St. Andero*. And it was reported, at the last Place, That the Duke of *Ormond*, with four Companies of Soldiers, were to be taken on board the *Revolution*, and that the Duke of *Ormond* was within a short Day's Journey of *St. Andero*; whereupon the first and second Mate of the said Ship suspecting *Gallwey* to be engaged in some unwarrantable Design, agreed not to serve any longer, unless *Gallwey* would give them a Note under his Hand, that they were forc'd into the Service, and give Security that they should not be employ'd in any other Voyage than what he declared to them: Whereupon one of them was confin'd, and the other discountenanc'd, by *Gallwey*.

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Gallwey, in a Letter dated the 13th of *September*, 1722. from *Alicant*, expresses his Concern for *Kelly's* Confinement: And a Letter in *Kelly's* Hand-writing, sign'd *Jo. Johnson*, directed for *Gardiner*, and enclosing a Note of twenty Guineas, payable to *Gallwey*, was found on board the *Revolution* when she was taken; as also a Direction enter'd with *Kelly's* own Hand, in a Pocket-book, suppos'd to belong to *Morgan*, which shew'd how extensive *Kelly's* Correspondences were.

Gallwey in a Letter from *Genoa*, dated the 3d of *Nov.* 1722. to one of the Pretender's Family, says he has acted for many Months under the Direction of *Medley* (*Ormond*), who he doubts not, has mention'd him to *Freeman* (the Pretender); and yet in his Letter to the Lord *Carteret*, after his Ship was taken; he affirms he never saw the Duke of *Ormond* since he left *England*, or ever corresponded with him, or the Pretender, or any of their Adherents; but was zealously affected to his present Majesty, and our happy Establishment.

Gustavus Bähr depos'd further, That he was inform'd the Pretender's Agents had Arms for 3000 Men, lodg'd at a House belonging to the Duke

Duke of Ormond, near Morlaix in Britany; which Port the Committee observe, was one of the usual Stations for the Pretender's Ships under Morgan; and it was probable these 3000 Arms were Part of the 10000 mention'd in O——s Letter to L——, as provided by D—— (Dillon).

The Lords Committees observing that some Paragraphs of the Letters referr'd to them, were writ originally in Cypher, called the Decyphers before them, in order to their being satisfied of the Truth of the Decyphering: The Account they receiv'd from those Persons was, 'That they have 'long been vers'd in this Science, and are ready 'to produce Witnesses of undoubted Reputation, 'who have fram'd Letters in Cypher on Purpose 'to put them to a Trial, and have constantly 'found their Decyphering to agree with the original Keys, which had been conceal'd from 'them. It was likewise confirm'd to the Committee, that Letters decypher'd by one or other 'of them in *England*, had exactly agreed with 'the Decyphering of the same Letters perform'd 'by Persons in foreign Parts, with whom they could 'have no Communication; and that in some Instances after they had decypher'd Letters for 'the Government, the Keys of those Cyphers 'had been seiz'd; and upon comparing them, had 'agreed exactly with their Decyphering.'

With Respect to the intercepted Letters in Question, they alledg'd, 'That in the Cypher 'us'd by *George Kelly*, they find the Words rang'd 'in an alphabetical Order, answering the progressive Order of the Figures by which they are express'd; so that the farther the initial Letter of 'any Word is remov'd from the Letter *A*. the 'higher the Number is by which such Word is 'denoted; That the same Word will be found to 'be constantly denoted by one and the same Figure, except in the Case of Particles, or Words 'of very frequent Use, which have two or three 'Figures assign'd to them, but those always following one the other in a progressive Order.'

They

They likewise set forth, ' That in the Cypher
' above-mention'd, a certain Order is constantly
' observ'd as to the Placing of the Words made use
' of; That under each Letter of the Alphabet, the
' first Cyphers are allotted to the proper Names
' of Places; the next to the proper Names or
' Titles of Persons; the next to whole Words in
' common Use, and the last to denote single Let-
' ters.'

As to the Truth of the Decyphering, they
alledg'd, ' That several Letters written in this
' Cypher had been decypher'd by them separate-
' ly, one being many Miles distant in the Coun-
' try, and the other in Town, and yet their De-
' cyphering agreed; the Facts unknown to them
' and the Government, at the Time of their De-
' cyphering, had been verified in every Circum-
' stance by subsequent Discoveries; as particularly
' that of *H——*'s Ship coming in Ballast to
' fetch *O——* to *England*, which had been
' so decypher'd by them, two Months before the
' Government had the least Notice of *Halstead's*
' having left *England*: That a Supplement to
' this Cypher having been found among *Dennis*
' *Kelly's* Papers, the latter End of *July*, agreed
' with the Key they had form'd of that Cypher
' the *April* before; That the Decyphering of the
' Letters sign'd *Jones, Illington*, and 1378, being
' afterwards apply'd by them to others written in
' the same Cypher, did immediately make perti-
' nent Sense, and such as had an Evidence, Con-
' nexion and Coherence with the Parts of those
' Letters that were out of Cypher, tho' the Words
' in Cypher were repeated in different Paragraphs
' and differently combin'd.' And they insist, that
these several Particulars duly weighed, amount
to a Demonstration of the Truth of their Decy-
phering.

' As to the other Cyphers made use of by *Fer-*
' *negan, Stanley* and *Walter Grahame*, they con-
' sist only of twenty-four Figures for the twenty-
' four Letters of the Alphabet, and some other
' Figures for proper Names, or whole Words, in

‘ the Placing of which Names a certain Order is
‘ also observ’d.’

These several Particulars they declar’d themselves ready to attest upon Oath, and to produce sufficient Witnesses to their Character and Integrity, as well as their Skill.

The Committee, in their Examination of *Layer*, observe, That he confess’d some few Particulars that were not mention’d in the Report of the Commons; as that before he set out for *Rome*, he acquainted *Plunket* with his Intentions, of carrying over a List of the Tory Gentlemen in *Norfolk*; That Sir *William Ellis* told him, he had formerly corresponded with *Plunket*, but not lately; or with any one else in Relation to the Pretender’s Affairs, having been forbidden it since the Action at *Dunblain*, when so many *Scotch* Gentlemen came over to the Pretender: But upon *Layer*’s desiring Leave to correspond with him, and promising not to write any Thing but what might be shewn to the Pretender himself; Sir *William Ellis* agreed to it, and gave him a Cypher of his own Hand writing, and another of cut Paper, for carrying on the Correspondence: That he also settled a Cypher of fictitious Names with Mrs. *Hughes*, Nurse to the Pretender’s Child, but knew of no other Cypher.

A further Account of *Layer*’s Examination.

That *Plunket* had mention’d a Club to him, but talk’d so inconsistently of them, that he thought it a mere Fiction of his own, and that there was never any such Club; That he thought Lord *Strafford* was one whom Lord *Orrery* mention’d, as going to do a rash Thing in Favour of the Pretender, with Lord *North* and Sir *H. Goring*; but he could not be positive as to Lord *Strafford*: That he (*Layer*) wrote himself to the Pretender concerning the Difference of Opinion between Lord *North* and *Orrery*, about the Means of restoring him, and the Necessity that the Regent should permit General *Dillon* to come over, with some foreign Troops. That he also drew a Scheme of a Lottery to be open’d here in Favour of the Pre-

tender, and enclos'd it in a Parcel with some silk Stockings for the Pretender and his Spouse, which he sent by *Andrew Hays*, who travell'd to *Italy* with Alderman *Barber*.

That he had some Discourse with *Hays* about getting Copper Plates engrav'd at *Rome*, in *English* and *Italian*, for the Tickets of the said Lottery, and desir'd him to receive Sir *William Ellis's* Directions about it; which *Hays* promis'd to do.

Hays own'd to the Committee the Receipt of the Stockings, but deny'd their being deliver'd to him by *Layer*, or that he knew who they were for: He own'd also he carry'd a Packet to *Bellein*, a Banker at *Rome*, which was brought to him by a Porter from *Layer*, as he suppos'd.

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Layer own'd, *Hays* told him *Bellein* was the Pretender's Banker, but deny'd his sending any such Packet by *Hays*; and in several other Particulars they contradicted each other.

A Scheme of the Lottery abovesaid, for raising 225000 *l.* being found among the Papers of *Walter Jefferies*, now in Custody; and he being examin'd how he came by it, pretended he did not know he had any such Paper, but own'd his being acquainted with *Layer* and *Plunket*.

Plunket's further Examination.

The Lords Committees proceeding to examine *John Plunket*, he made great Professions of his Innocence; pretended that the Letters supposed to be directed to him, were directed to other Persons of the same Name, without offering the least Proof or Circumstance of Probability to shew that there ever were such Persons in Being.

Being ask'd whether he had dictated any fictitious Names to *Layer*, or mention'd any Thing of a Club; he answer'd, he had given *Layer* the fictitious Names of *Bedford* or *Burford*, for Lord *Orrery*, which Name he had from *Neynos*; That one Night being in Company with *Layer* and some Clergymen, whose Names he had forgot; and talking of the Protests of the Lords, and the Names subscribed to them; and one saying, They were

were a Loyal Club, and another, That they were *Jacobites*; he *Plunket*, said, There was a Loyal Club of eighty or ninety Lords, who would stand in Defence of their Country. He added, That his Name was *Plukcet* and not *Plunket*, and declin'd telling his Christian Name, seeming to place some Hopes in this Subterfuge.

The Committee finding him trifle with them in this egregious Manner, ask'd him, If he had ever been in Conference with the Pretender, or corresponded with him or his Agents; to which he answer'd in the Negative.

They then sent for *George Kelly*, who told them, That the Affair being soon to be brought before their Lordships, he desir'd to be excus'd answering any Questions.

Whereupon they sent for *Philip Caryll*, and demanded if he had any Thing to add or retract from his former Depositions; which being read over to him, he seem'd very angry at their being made publick, and insinuated that they had not been truly taken down; particularly he said, that it was not strictly true, That Sir *Harry Goring* told him what is there related of an Invasion, Commission, &c. That as to Lord *Lansdown's* being to land in the West, he could not be positive, but thought Sir *H. Goring* said so: He said it was but a Supposition of his own, That the Discourse which occasion'd the Bishop of *Rocheſter's* taking Sir *H. Goring* by the Collar, related to the Pretender's Affairs: But remembers Sir *Harry Goring* did affirm, on the saying the Words there recited, (*This is rocking the Cradle indeed*) the Bishop did take him by the Collar, and that he (*Caryll*) did apprehend the said Discourse related to the Pretender's Affairs—— That the Words in his Deposition that import, *He had Reason to believe Kelly and Sir H. Goring were settling a Key together*, were too strong; for he, *Caryll*, did not see any such Key, only suspected they were framing one; he affirm'd also, That what related to *Boyce*, was too strong; for *Boyce* only told him; he was afraid the Servant he (*Caryll*) had sent him

him to help off, was *Sample*, because he was disguised, and was something like the Description of *Sample* in the Proclamation. All the other Particulars he averred to be true, but said, he would rather die a thousand Times in *Newgate* than be an Evidence.

Boyce own'd to them his carrying over Sir *H. Goring* to *France* in his Yacht, and that a Servant went over with him in a black Wig, whom he had never seen with Sir *Harry* before, but deny'd his having convey'd over any Person sent to him by Mr. *Caryll*, or having any Discourse with *Caryll* about a Person answering the Description of *Sample*.

That *William Beasing* of *Horndean* having his former Depositions read to him, retracted what he had said concerning *Caryll* and Sir *H. Goring's* being in Company at his House, with the Person who had but one Hand; but says, such a Person was at his House with two other Gentlemen.

The Lords Committees find new Evidence of *Kelly's* Visiting, Writing to, and receiving Letters from the Bishop of *Rocheſter*, (*viz.*) By Affidavits from the Persons who carry'd *Kelly* to the Bishop's House, and who deliver'd Letters from him to the Bishop, and brought back the Bishop's Answers. Mrs. *Levet* had depos'd, That Mrs. *Barnes* told her, *Kelly* receiv'd one Day as many Letters from abroad as came to fourteen or fifteen Shillings; but the Directions were in such odd fictitious Names as no one could find out but *Kelly*, who had the Key; That among them there was one for the Bishop of *Rocheſter*, which he was at that Time gone to deliver him: That *John Malone* depos'd, He carry'd ſeveral Letters to the Poſt, directed to *Waters*, the Banker at *Paris*, under whose Cover it appear'd moſt of the treasonable Letters were ſent; and the original Letter in *Kelly's* own Hand, ſtopp'd at the Poſt-Office, was enclor'd in a Cover ſo directed—— Mrs. *Levet* further depos'd, That Mrs. *Barnes* told her, under Secreſy, That the Dog ſent from
France,

France, was a Present from the Lord Marr to the Bishop of Rochester's Lady.

The Committee find by two Affidavits, That *George Kelly*, the last Time he was taken into Custody, offer'd the Woman of the House a Gold Watch, forty Guineas, and a Note for 40 l. to let him escape.

Dennis Kelly, at his Examination, deny'd his knowing any Thing relating to the Conspiracy.

Captain *Pancier* affirm'd his former Depositions, adding, That having lately seen *George Kelly*, he recollected he had often seen him at the Gaming-Tables with *Skeene*, and that *Skeene* and the said *Kelly* were intimately acquainted.

Skeene acknowledg'd he was acquainted with *George Kelly*, and with *Pancier*; That he was taken Prisoner in the *Preston* Rebellion, but was not related to *Marr*, nor had seen *Mackintosh* since he parted from him at *Highbate*; he own'd he had talk'd with *Pancier* about the Plot, but said no more of it than he found in the Newspapers.

The Committee find among the Papers, a Copy of the Orders which *Arnold* receiv'd from the Owners of the Ship *Phineas*, requiring him to follow the Directions of *Roger Howell* (*Halstead*), and an Affidavit, That *Halstead* was to visit the Bishop of Rochester, at his House, a few Days before his setting out for *Bilboa*.

They also find a Letter to one of the Secretaries of State, which appears to be the Letter refer'd to in one of *Neynoe's* Examinations, as drawn up by *Kelly* and himself, and corrected by the Bishop of Rochester.

They likewise find a Paper taken in the Lord *North's* Study at *Catledge*, treating of the Nature of Oaths, and tending to prove, That the Oaths to the present Government are not Obligatory.

On *April* the 24th, the House took into Consideration the Report from the Lords Committees; and resolv'd, that the House was fully satisfied and convinc'd, That a detestable and wicked Conspiracy had been carried on, &c. as the Lords

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Proceedings against Bishop Atterbury, &c.

Committees had resolv'd in the Beginning of this Report; and ordered, That the Thanks of the House be given to the Lords Committees by the Lord Chancellor, for their having discharg'd the Trust repos'd in them with great Exactness, Care, Fidelity, and Candour: Which the Lord Chancellor did accordingly, having made a Speech suitable to the Occasion.

A Bill having been brought into the House of Commons the 19th of *March*, to inflict Pains and Penalties on *John Plunket*: To which *Plunket* made no Defence; it pass'd that House the 5th of *April*, and was sent up to the Lords; who after hearing Counsel for the Bill, and *Plunket* himself against it, the Bill pass'd that House, and afterwards receiv'd the Royal Assent, and is as follows:

An Act to inflict Pains and Penalties on John Plunket.

¶ **W** Hereas in the Years 1721, and 1722, a detestable and horrid Conspiracy was form'd and carry'd on by divers Traitors, for invading your Majesty's Kingdoms with foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the *Tower* and City of *London*, and for laying violent Hands upon your Majesty's most sacred Person, and upon his Royal Highness the Prince of *Wales*, in order to subvert our present happy Establishment in Church and State, and to place a Popish Pretender on your Throne; and whereas for the better concealing and effecting the said Conspiracy, divers treasonable Correspondences were within the Time aforesaid carry'd on by Letters written in Cyphers, cant Words, and fictitious Names; which Conspiracy, had not Almighty God in his great Mercy disappointed the same, would have deprived your Majesty's Kingdoms of the Enjoyment of their Religion, Laws, and Liberties, involv'd them in Blood and Ruin, and subjected your People to the Bondage and Oppression of *Romish* Superstition and

‘ and arbitrary Power; for which execrable Treason, *Christopher Layer* hath been indicted, try’d, convicted, and attainted. And whereas *John Plunket* hath been a principal Actor in the said horrid and detestable Conspiracy, by traiterously consulting and corresponding with divers Persons, to raise an Insurrection and Rebellion against your Majesty within this Kingdom, and to procure a foreign Force to invade the same, with a Design to depose your Majesty, and to place the Pretender on your Throne, by traiterously corresponding with the said Pretender, and by engaging in a most execrable and villanous Design of laying violent Hands upon the sacred Person of your Majesty (whom God long preserve). Therefore to manifest our just Abhorrence of so wicked a Conspiracy, and our Zeal and tender Regard for the Preservation of your Majesty’s Person and Government, and for the Protestant Succession in your Majesty’s Royal Family, the solid Foundation of our present Happiness and future Hopes; and to the End that no Conspirator may, by any Contrivance or Practice whatsoever escape Punishment, and that all Persons may be by the Justice of Parliament, for ever hereafter deterr’d from engaging in any traiterous Conspiracies and Attempts: We your Majesty’s most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament assembled, do humbly beseech your Majesty that it may be enacted; and be it enacted by the King’s most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That the said *John Plunket* shall be detain’d and kept in close and safe Custody, without Bail or Mainprize, during the Pleasure of his Majesty, his Heirs and Successors, in any Gaol or Prison within the Kingdom of Great Britain, to the Custody of the Gaoler or Keeper whereof the said *John Plunket* shall be from Time to Time committed in Pursuance of this

‘ Act, by Warrant under the Hand and Seal of
 ‘ any Secretary of State of his Majesty, his Heirs
 ‘ or Successors; which Warrant or Warrants any
 ‘ Secretary of State for the Time being, is here-
 ‘ by authoriz’d and impower’d to make; and that
 ‘ the said *John Plunket* shall forfeit to his Ma-
 ‘ jesty all his Lands, Tenements, Hereditaments,
 ‘ Goods and Chattels whatsoever.

‘ And for more sure detaining the said *John*
 ‘ *Plunket* in safe Custody, be it farther enacted
 ‘ by the Authority aforesaid, That if the said *John*
 ‘ *Plunket* shall break such Gaol or Prison to
 ‘ which he shall be so committed, or shall escape
 ‘ out of the Custody of the Person, in whose Cu-
 ‘ stody he shall be by Virtue of such Commit-
 ‘ ment, That then the said *John Plunket*, and
 ‘ all and every Person and Persons whatsoever,
 ‘ who shall be aiding or assisting the said *John*
 ‘ *Plunket* in breaking such Gaol or Prison, or in
 ‘ making such Escape as aforesaid, or who shall
 ‘ by Force take or rescue the said *John Plunket*
 ‘ out of such Custody, Gaol or Prison, during the
 ‘ Continuance of his Imprisonment by Virtue of
 ‘ this Act, being thereof lawfully convicted, shall
 ‘ be adjudg’d guilty of Felony without Benefit of
 ‘ Clergy.’

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In Pursuance of this Act, *John Plunket* was
 continu’d Prisoner in the *Tower of London*.

The same Day a Bill to inflict Pains and Penal-
 ties on *George Kelly*, alias *Johnson*, was brought
 into the House of Commons, where Counsel ha-
 ving been heard for and against the Bill, it pass’d
 the 6th of *April*; the Lords also heard Counsel
 for and against the Bill, and *Kelly* made a Speech
 himself upon the Occasion, in each House; no-
 thing of which was publish’d, but the Tenor of
Kelly’s Speech in the Lord’s House, is as fol-
 lows:

He observ’d, That the many Inconsistences,
 Contradictions and false Conclusions, which ap-
 pear’d in almost every Page of the printed Re-
 ports, plainly shew’d the Weakness, Absurdity,
 and

and Sophistry of them ; and beg'd Leave to examine such Points as related to himself.

That the first Article he found himself charg'd with, was the Employing one *Neynoe* to draw up three Memorials to the Regent of *France*, to solicit Foreign Forces to invade these Kingdoms: And for Proof of this, the Examinations of the same Person, which were neither upon Oath, or signed by him, (and whom the Commons had represented as an infamous Fellow) were the only Evidence.

The two first of these Memorials were but slightly mentioned, but the other said to be drawn up in *December* 1721, and containing a Demand of 5000 Men ; and a Letter pretended to be written the *March* after, to amuse the Government into a false Security, were the chief Things on which any Stress was laid. But had his Accuser been really employed to draw up any such Memorials, it was reasonable to believe he would have had Copies of them, since a Person who turn'd Informer so suddenly after, may very well be presumed to have had Thoughts of it for some Time before, and such Papers might have given great Weight to his Information ; but the Ministry had produced no such Copies, which was a great Indication there never were any such Memorials. Page 392.

That *Neynoe* contradicted himself at almost every Examination : In the Second, he says, they were drawn up by the Order of one *Henry Watson*, whom he took to be the Earl-Marshal, and himself (*Kelly*): In the Third, that they were deliver'd to *Kelly* and *Watson* ; and in the Fourth, that they were all drawn up by the Order of *Henry Watson* only : And a few Lines after, that the Heads of them were given him by *Kelly* and *Watson* ; which were such Inconsistences, as were not to be reconciled : And if his Memorials were no better drawn than his Examinations, they were not like to meet with any great Success.

And was it reasonable to believe a Person in the Earl-Marshal's Circumstances should come into *England*, and live so openly here, and intrust him-

himself and a Secret of this Nature, to a Fellow that did not know him ; and it was plain he (*Kelly*) could have no Hand in them, since by his Pocket-Book, and the concurrent Testimony of Witnesses, he went to *France* the 23d of *November* 1721, and did not return till the latter End of the next Month ; and *Neynoe* acknowledged he did not see him till *January* after, which made it impossible *Neynoe* should be employed by him in *December*.

Nor was there better Grounds for the Letter *Neynoe* pretended was drawn up in *March* ; for it appeared by the same Evidence, that he (*Kelly*) went into *France* the 22d of *February*, and did not return till the Middle of *April* ; so that he was then likewise out of the Kingdom——

That *Neynoe* had confessed he was the first who set the Government upon intercepting Letters ; and the first Letters so intercepted, according to the Report of the Lower House, was the 22d of *April* 1722. And he could not be supposed to have so soon forgot what happened the very Month before : From whence it appeared, that this Article was not only groundless, but evidently false ; nor was there that Intimacy between them, as the Report pretended ; for *Neynoe* had declared, that he (*Kelly*) never spoke to him of the Conspiracy ; and if *Neynoe* came to his Lodgings, his Visits were to another Person, and not to him. And he solemnly affirms he was never acquainted with the Earl-Marshal, or any Person who went by the Name of *Watson*, had never spoken to *Neynoe* ten Times in his Life, or employed him in this or any other Affair.

As to his Carrying on a treasonable Correspondence for the Bishop of *Rocheſter*, the Examination of *Neynoe* was the only Evidence produced against him ; wherein *Neynoe* says, *Kelly* frequently told him the Bishop was concerned in such a Correspondence, and that he (*Kelly*) managed it for him : But was it reasonable to suppose he should tell a Thing of that Nature to a Person he
knew

knew so very little of; and what Credit was to be given to the bare Assertions of a Person, who had affirmed such notorious Falshoods.

He solemnly declared, upon the Faith of a Christian, he never wrote or received a Letter of any Kind for the Bishop of *Rocheſter*, or was privy to any Correspondence of his, at home or abroad; That he never shew'd him any Letter that ever he wrote to *Fraunce*, or sent one thither by his Privy or Direction; That he was very little known to his Lordship, and very rarely went to wait on him; That few of his Servants either knew his Name or his Face; he had not seen him above three or four Times for two Years past, and not above eight or ten Times in his whole Life.

That his Visits to his Lordship were always publick; he never went privately in a Chair to his House; That he never mentioned his Lordship's Name to *Neynoe*, on this or any other Account; which with the Evidence that had been produced of *Neynoe's* Confessions to that Purpose, he hop'd was sufficient to convince their Lordships of the Truth of it.

As to the Dog which was brought as a Circum-
stance to prove this Matter, he solemnly declared
it was given him by a Surgeon at *Paris*, (whose
Affidavit had been offer'd to be produced) and
that the Dog was never designed for any Body but
the Person he gave it to: And he appealed to the
Ministers themselves, if the *British* Resident at
Paris (who was constantly attended by that very
Surgeon, and examined him about it) had not
confirmed the Truth of this Account to them;
That the Bishop of *Rocheſter* never saw the Dog,
or receiv'd any Letter or Message about it by him
(*Kelly*;) nor did he ever hear his Lordship had
any Correspondence with the Earl of *Marr*, or
any other disaffected Person abroad.

As to *Pancier's* Deposition, who swears another
told him of this Conspiracy, that six or eight Ba-
talions of *Irish* Forces were to come from *Spain*,
that 200,000 *l.* were raised, and 800 Men regularly
subsisted

subsisted in *London*: Could it be imagin'd that such a Force should come from *Spain* when there was so strict a Friendship between the two Kingdoms, or that 200,000 *l.* could be raised among all the disaffected in *England*? If there was a Licence for it, or 800 Men regularly subsisted in the City without a Discovery, such inconsistent Tales, he was perswaded, could have no Weight with their Lordships: Besides, this was bare Hearsay; and if the Hearsay of such infamous Persons, or indeed of any Persons, was looked upon as sufficient Evidence, no Man could be sure of his Life or Liberty an Hour, since any two Persons might talk him into High Treason when they pleased.

As to the third Charge against him, that he had written three treasonable Letters for the Bishop of *R.* supposed to be for the Pretender, the Earl of *Marr*, and General *Dillon*, and said to be sent by him (*Kelly*) to Mr. *Gordon* at *Bologn*, with Directions to be deliver'd to one *Talbot*: For Proof of which, the Clerks of the *Post-Office* are brought to swear, That those Letters, to the best of their Knowledge, were written in the same Hand with an Original stopp'd, as a Specimen of it: Which Original had been sworn to be his (*Kelly's*) Writing, and consequently those Letters must be so too.

He observes, That those Letters were dated the 20th of *April*, and the Specimen that was stopp'd, dated the 20th of *August*, four Months after: And how was it possible for People who receive such Numbers of Letters to swear to a Likeness of Hands at such a Distance of Time? What Weight was to be laid on this Kind of Evidence, or that modern and mysterious one given by the Decyphers, who don't pretend to a Certainty themselves, he submitted to their Lordships. As to one of the Persons who had sworn to his Hand, he was a Messenger who never saw any of his Writing but the Subscriptions of a few Letters, which did not bear the least Resemblance to what he had sworn to: Besides, he was turn'd out of his Employment upon his (*Kelly's*) Account; and
a few

a few Days after, when he had given his Evidence in the House of Commons, restor'd again : The other was a Servant who attended him only three Weeks, and turn'd off for an infamous Action ; who had also confessed that he never saw him (*Kelly*) write, but as he went backwards and forwards in the Room, and at such a Distance, as not to be able to distinguish one Character from another : It had been proved also by two Witnesses, that this Servant declared, he never knew any Thing of his (*Kelly's*) Hand, but was threatned by the Secretary into the Affidavit he made. If that Paper had been his Writing, they would not have been reduced to the Necessity of making Use of such improper Evidence, since no Pains had been spared to procure better. Numbers of People had been taken up, confin'd and examin'd to this Point ; and *Newgate* sent to, more than once, for Witnesses to it.

That it appeared from the very Report of the lower House, these Letters could not come from the Bishop of *Rocheſter* : However, his Business was only to shew that he (*Kelly*) was not the Writer of them : And if these Letters had been dictated to him the 20th of *April*, as the Report pretends, it must have been at his Lordship's House in the Country, since it appeared the Bishop went thither the 12th of *April*, and did not leave it till the 5th of *May*. But it had been proved, that he (*Kelly*) was in *London* all that Time ; and all the Bishop's Family could testify, if it was permitted, that he was not there then, and consequently could not have writ those Letters for him ; and he had besides brought several Witnesses to testify that the Writing was not like his Hand-writing. An Affidavit was produced also from Mr. *Gordon*, that he never receiv'd any such Letters from him (*Kelly*), or ever had any Correspondence or Acquaintance with him : And it had been proved, that Mr. *Talbot* was in *London* at the Time these Letters were said to be deliver'd him at *Bologn* ; and could it be supposed he would trust such Letters by the Common Post, when

when he had an Opportunity of sending them by Mr. *Talbot's* Hand. These were such evident Proofs as he hoped could not fail of giving their Lordships entire Satisfaction in this Matter ; and consequently that this Article was false and groundless.

But if any Credit was to be given to *Neynoe's* Confessions, it was plain those Letters came from another Quarter, and were calculated to carry on his own *base villanous Designs* ; for *Neynoe* confessed, he had been employed by one of the Ministers, received 300 *l.* of him, and was to have 2000 *l.* more. That this Minister declared a personal Prejudice to the Bishop of *Rocheſter*, was resolved to pull down the Pride of that haughty Prelate, and to squeeze him (*Kelly*) to that Purpose ; and how he had been squeez'd, was but too well known to the World.

And the Cypher by which those Letters were written, and which *Neynoe* own'd to have receiv'd from that Minister, was actually found upon the Person to whom he gave it ; and *Neynoe* confessed he put a Paper of Directions into his (*Kelly's*) Drawers, by which, according to the Report, most of the treasonable Letters were addressed ; and *Neynoe* had made some Pretence to be above in his (*Kelly's*) Lodgings the very Night before he was first taken up. And since *Neynoe* was the first who put the Ministry upon intercepting Letters, it was very extraordinary that such a material Part of his Evidence should be omitted in his Examination ; or that the very first Letters so intercepted, should happen to be the Bishop of *Rocheſter's*. Had the Originals of those three Letters been stopp'd, he did not doubt they might have been proved to have been his Accuser's own Hand-writing : How strong a Sense he had of his Guilt by attempting an Escape that proved fatal to him, and how visibly the Hand of God had interposed in Favour of that Eminent Prelate, by taking one of the Persons (design'd for his Destruction) out of the World, and giving the other Grace to withstand all Temptations to his Prejudice,

judice, were worthy their Lordships Consideration.

It was observable also that there was a very sudden Change in *Neynoe's* Condition; That from the lowest State of Poverty and Want, he soon arrived to that of a most vicious and profligate Affluence: But from whence that Change proceeded, what real Grounds he had for aspersing that Honourable Person, he could not pretend to say; but if those Aspersions were false, it might justly be inferred, that a Fellow, who was capable of vilifying one Person, might very well be thought capable of doing the same by another; and if his Veracity was not to be relied on in the one Case, neither was it in the other.

As to the fourth Crime alledged against him, his Writing or Receiving a great Number of intercepted Letters to and from the Lord *Marr*, *Dillon*, and other disaffected Persons: The Proof of this was by a *Frenchman*, who deposed, he once saw him take up a Letter at *Burton's* Coffee-house, directed to *Baker*; by which Name, 'tis said, some of the treasonable Letters were addressed. But he observed, that when this Person gave his Evidence before the Commons, he did not know him, tho' he spoke to him, and looked several Times earnestly at him; for which he appealed to the Members of that House; and he would have probably continued still in the same Ignorance, if some private Hints had not been given him, and the same Methods taken, as had been with abundance of other strange Fellows, who had been sent to the *Tower*, only to take a View of him: Besides, the People of the Coffee-house denied that any such Letter came to their House; and though it was set down in his Examination that he had confessed it, he appealed to the Lord Chancellor if he did not deny it; nor was this the only Particular falsely set down in his Examination: He solemnly affirmed he never received any such Letter, or saw that Paper of Directions, till it was printed in the Report.

And it is remarkable in this Correspondence, that as it began with *Neynoe's* Information, so it ended with his being taken up: For immediately after a new Correspondence is said to be discovered, and to fix it upon him, it was suggested, he sent Cyphers by Sir *H. Goring* to *France*, and that Letters were directed by them to *Sturges* and *Slaughter's* Coffee-house; but no Cyphers were found in his Custody, nor any Papers relating to such Correspondence: And the People of these Coffee-houses had deposed, he never order'd any Letters of that Kind to be taken in, or receiv'd one, either in his or any other Name, from them.

As to *Carryl's* printed Examination, he was confident that Gentleman never saw him write a Line in his Life, or give a Piece of Paper of any Kind to Sir *Harry Goring*; and what Reason he could have for believing they settled a Key, he could not imagine: The other Particulars, which *Carryl* had affirmed, had as little Foundation; for he (*Kelly*) never saw *Sample* in his Life, or ever gave Capt. *Boyce* any such Letter of Recommendation, or ever spoke to the Lord *North*, or was known to him; which made it very incredible he should mention him so familiarly by the fictitious Name of *Johnson*, which he himself is said to go by.

He is charged further with sending a Letter to Mr. *Gordon* at *Bologn*, with two Affidavits, desiring *Gordon* and one *Birmingham* to perjure themselves on his Account; for that in the Letter, it is said, *The Inclosed is a Copy of a Note from the Person concerned with what he thinks requisite.* But this Letter is dated the 20th of *March*, at which Time, and for five Months before, he was not allowed Pen, Ink or Paper, or of seeing any Person that could convey such a Note for him: He had been guarded in a different Manner to other People in the *Tower*: His Warders were put into the Room with him, and order'd not to stir out of it a Moment, Night or Day; which they had punctually observed, and were constant

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Witnesses

Witnesses to all his Actions: And Mr. *Gordon*, at last, sent over his Affidavit in a different Form from that which was printed.

Another Crime alledged against him was in the Deposition of Mrs. *Levett*, who, among a great many other Falshoods, swears, that one Mrs. *Barnes* told her, that *Kelly* was instrumental in shutting up a Person in a Dungeon, for fear of his turning Informer; and not only him, but two hundred more on the same Account. But Mrs. *Barnes* denied every Syllable of this Conversation; and if the Person that swears it had been produced, she would have been proved to be a vile infamous Creature all her Life: And if their Lordships could think there was any Proof in her Deposition, they could not possibly find out a Punishment too cruel for him.

That he had already suffer'd for these supposed Crimes, taken up and held to exorbitant Bail, without assigning any particular Crime against him; suffered a long and close Confinement, where the Expence bore no Proportion to his Circumstances; Numbers of People tamper'd with, and his most intimate Friends imprisoned for not swearing against him: All which was of a Piece, with an infamous Offer made him by one of the Under Secretaries of State, who came to him from one of his Superiors to let him know, *That he had now a very good Opportunity of serving himself; he was sent to offer him his own Conditions.* And that when he declared himself a Stranger to the Conspiracy, the Under Secretary said, *He might have any Thing he pleased to ask.* What Authority that Person had for this Message, or the rest of his After-proceedings, he did not know; but he was utterly ruined by them; and he hoped their Lordships would take his Circumstances, as well as Sufferings, into Consideration; and instead of inflicting further Pains and Penalties, look upon him as a Person highly injured, and not a Criminal concerned in Transactions against the Government.

As to the Legality of the Proceedings against him, and the Danger of making Precedents of this Kind; these Things had been fully spoke to by his Counsel: But the only Argument he had heard for passing this Bill was, That the Occasion was extraordinary; That their Lordships acted in their Legislative Capacity; and tho' the Proofs were not legal, however it was necessary *in terrorem* that the Bill should pass; but where did the Extraordinariness of this Occasion lie; had there been the least Commotion in the three Kingdoms? Were any Persons injured in their Liberties or Fortunes, but those who had fallen under this Suspicion? Or was the Occasion more extraordinary than when there was a publick Insurrection, when the Persons concerned in it were try'd in the ordinary Courts of Justice? And because their Lordships were visited with a supreme Authority, and not tied up to the common Forms of Law, could this be a Reason for acting directly contrary to it.

The first extraordinary Bill, he believed, that ever passed in *England*, was that of the Earl of *Strafford's*; and how much personal Prejudice was in that Prosecution, and how fatal the Bill proved in its Consequences, he need not mention, since the Royal Martyr, in his dying Words, call'd it an Unjust Sentence, and imputed all his Misfortunes to it: And why was that Sentence unjust, but because it was not supported by Law; and to the Eternal Honour of that House, for Want of legal Proof, they refused to find him guilty. But when this extraordinary Method was taken, and the Torrent of the Times bore down their usual Justice, then the Floodgates of all those Miseries were opened, which overwhelmed and sunk the Constitution.

He should beg Leave to add one Observation, that was but too well known to the Right Reverend Bench, *That of all the Prelates who advised his Majesty to the Passing of that fatal Bill, not one of them escaped the Violence of those very Persons,*

Persons, whom they endeavoured to oblige by that Advice.

Many Arguments might be brought to shew the Injustice and Inconvenience of these Laws ; but as his Liberty could be of no great Moment to the World, he only desir'd their Lordships, that they would not, through him, give a Wound to the Constitution, which might not be easily healed. That, which distinguished *England* from other Nations, was the Excellency of her Laws, of which their Lordships were the Guardians ; but if they suffered these Laws to be broken through, and render'd Life and Liberty so precarious, as to be affected or taken away on every idle Hear-say, *That* Excellency must soon disappear, and the best Form of Government now upon Earth, sink into Anarchy and Confusion.

He proposed no great Happiness in this Life, but would willingly avoid as much Misery as he could ; and therefore desir'd that their Lordships would look upon him as a Stranger in this Kingdom ; a Person inconsiderable in himself, and consequently incapable of doing any Prejudice to the Government : He was willing to give what Security he was able ; but if that was not accepted, he hoped their Lordships would give him Leave to retire to some Corner of the World, where he might enjoy his Poverty with Freedom : But whatever his Fate should be, he should ever pray for their Lordships, and resigned himself, with the utmost Humility, to their great Clemency, Justice and Compassion.

His Defence being concluded, the Lords passed the Bill, intituled, *An Act to inflict Pains and Penalties on George Kelly, alias Johnson.*

THIS Act was exactly the same with that of *Plunket's*, only changing the Names, and varying the Expression from the Words *convicted and attainted to therefore to manifest* ; instead of which the following Inducement is inserted, (*viz.*) ' And ' whereas *George Kelly, alias Johnson*, hath been a

‘ principal Actor in the said horrid and detestable
 ‘ Conspiracy, by traiterously consulting and cor-
 ‘ responding with divers Persons to procure a fo-
 ‘ reign Force to invade this Kingdom, and to
 ‘ raise an Infurrection and Rebellion against your
 ‘ Majesty, within the same, with a Design to de-
 ‘ pose your Majesty, and place the Pretender on
 ‘ your Throne; for which treasonable Practices
 ‘ the said *George Kelly*, alias *Johnson*, being arrest-
 ‘ ed, and divers Papers then found about him
 ‘ seiz’d, in Pursuance of a Warrant under the Hand
 ‘ and Seal of one of your Majesty’s principal Se-
 ‘ cretaries of State, for seizing and apprehending
 ‘ the said *George Kelly*, alias *Johnson*, together
 ‘ with his Papers: And the said *George Kelly*, alias
 ‘ *Johnson*, being in Custody of a Messenger, by
 ‘ Virtue of the said Warrant, did by Force and
 ‘ Violence, with a drawn Sword, make an Af-
 ‘ fault upon and resist the said Messenger, with In-
 ‘ tent to destroy the said Papers, and did burn the
 ‘ same.’

Therefore to manifest our just Abhorrence, &c.
 (as in *Plunket’s Bill*) in Pursuance of which Act,
George Kelly was continued a Prisoner in the
Tower.

Proceedings a-
 gainst the Bi-
 shop of Roche-
 ster.

Another Bill having been brought into the
 House of Commons on the 22d of *March* 1722-3,
 to inflict Pains and Penalties on *Francis Lord Bi-*
shop of Rochester, where the Bishop made no
 Defence. It passed that House on the 9th of *A-*
pril, and was sent up to the Lords.

He is brought
 to his Trial.

On *Monday* the 26th of *May*, 1723, the Bishop
 of *Rochester* was brought to the Bar of the House
 of Lords: And after the Reading of the Bill,
 the King’s Counsel produced their Evidence against
 him; the Examination whereof taking up this
 and the two following Days, the Bishop’s Coun-
 sel, on *Thursday* the 9th of *May*, enter’d upon his
 Defence, and produced their Witnesses in Behalf
 of the Bishop.

Page 398.

Sir *Constantine*
Phipp’s Speech
 in the Bishop’s
 Defence.

After which Sir *Constantine Phipps*, of Coun-
 sel for the Bishop, made his Observations on the
 Proceedings and the Evidence——He said, Bills
 for

for taking away Mens Liberties and Estates by Circumstances only, were new; and though it had been said by the other Side, that circumstantial Evidence was sufficient *at this Time of Day*, he hoped the Law was the same *at this Time of Day* as ever, and the Lives and Fortunes of the Subject would be as well protected and defended by their Lordships, as they were by their Predecessors.

The Law was the Rule of Mens Actions, and they ought to be tried by the Laws that were in Force, at the Time of the Facts committed, and not by Laws *ex post facto* made to punish Men for Facts that were not Offences at the Time they were committed; which must render all Things that were dear to *Englishmen* precarious; and for that Reason had been condemned as often as they had been made.

The Power of Parliaments, as to Bills of Attainder, had been very rarely exerted, unless upon extraordinary Occasions; and in Cases of Necessity; and the Case of the Bishop, was not within either of these Reasons: He never withdrew himself out of the Kingdom, or fled from Justice, but was always amenable and forth-coming, ready to be try'd in the usual Methods of Justice. And the Attainder of *Mortimer* and the Earl of *Arun- del*, in the Reign of *Edward III.* of Sir *Thomas Haxey* in *Richard II.* and others, were reversed, because they might have been brought to Trial in the ordinary Course of Justice; and at the Restoration, the Regicides had a fair Trial in the ordinary Way. The only remarkable Bill of Attainder for some Years, except in Cases of open Rebellion, was that of Sir *John Fenwick*; but the Reasons given for passing that Bill, were the strongest Arguments in the World against passing this.

For the Preamble sets forth, That Sir *John* had procured his Trial to be delayed, by Promises of Confession, till one of the Witnesses was supposed to be withdrawn by his Management; besides, he

had been indicted, and two Witnesses sworn upon it, who proved the Treason.

Whereas the Bishop had not been indicted, or any Oath made against him: He had never impos'd upon his Majesty by Promises of a Discovery, or sent away any Witness, and therefore there was no Reason their Lordships should pass this Bill.

The greater the Offence, the Plainer ought to be the Proof; and my Lord Coke in his 4th *Inst.* p. 37. says, *The more high and absolute the Jurisdiction of the Court is; the more just and honourable the Proceedings ought to be, to give an Example of Justice to inferior Courts.*

That the Offence charg'd on the Bishop was of the highest Nature; their Lordships Jurisdiction most high and absolute; the Proceedings therefore ought to be the most just and honourable.

The Punishment inflicted by the Bill was the greatest next to Death; for what could be worse, than for a Reverend Prelate, advanc'd in Years, and of an infirm Body, than to be banish'd to another Country, and be forc'd to seek his Bread in desolate Places.

For though his Eminent Hospitality and extensive Charity had fitted and prepar'd him to live in another World, they had disabled him from subsisting in another Country; he would there want that Charity he had liberally bestow'd on others, and must beg upon his Crutches, or starve.

The Evidence against him would not support an Indictment for the lowest Misdemeanor; and would that House convict a Lord of Parliament, a Member of their own Body, and inflict on him the severest Punishment, upon Evidence that at Law would not be sufficient to convict the meanest Subject of the most minute Trespas.

As to the Charge of *sending for foreign Forces*, it was not so much as alledg'd, that the Bishop was privy to any one of *Neynoe's* three Memorials; for *Neynoe* says they were dictated to him by

by *Kelly* and *Watson*, whom he supposed to be the Earl Marshal.

As to the *Raising a Rebellion* at the Time of the Elections, this was founded on a Letter sign'd 1378, and directed to Mr. *Jackson*, which the Committee say they have good Reason to believe was from the Bishop of *Rochester* to the Pretender.

The Letter says, *Though this Opportunity is elaps'd, I agree with you, another may offer before the End of the Year*: The Observation upon it is, That it was wrote the 20th of *April*, when most of the Elections were over; consequently the Opportunity lapsed.

As for *Raising a Rebellion* when the King went to *Hannover*, it was inferr'd from dark Passages in other Letters: In one of the 9th of *May*, O. S. 20th N. S. *Quitwell*, suppos'd to be *Dillon's* Secretary, writes to *Baker*, suppos'd to be *Kelly*, That if this Post hath not brought an Addition of 3 to 6 formerly come from *Repney*; it was easy for Mrs. *Jones* to see what is still wanting for the Purchase she intends to make. In a Letter of the 10th of *May* O. S. *Hatfield*, suppos'd to be *Kelly*, writes to *Howel*, suppos'd to be *Dillon's* Secretary, That the King intends to set out early next Month, if they could then compass Barrels enough; the sooner the Wine comes the better; *Jones* promises to be a good Customer.

From hence, and from what *Pancier* said, *Skeen* told him, 'twas insinuated great foreign Forces were to be brought in for the Pretender, and great Sums contributed, which were to be under the Management of the Bishop.

Now, if by *Quitwell* and *Howel* are meant Page 400. *Dillon's* Secretary, and by *Baker* and *Hatfield*, *Kelly* is intended; and if by an Addition of 3 to 6 is meant a Remittance of Money; by Wine, Soldiers; and by Mrs. *Jones*, the Bishop of *Rochester*;

Yet what *Dillon's* Secretary writes to *Kelly*, or *Kelly* to him, can never affect the Bishop; for then it would be in the Power of any two Men,

the one Residing here, and the other in *France*, to take away any Man's Life: And, as they should make it appear, that by Mrs. *Jones* could not be meant the Bishop, there could be nothing in this Part of the Charge.

There was an Extract of another Letter dated the first of *May*, brought to support this Charge, written from *Quitwell* to *James Baker*, wherein 'tis said, Mrs. *Jones* cannot take a better Time to have herself fitted with an easy Saddle; and if the Construction put upon it be admitted, then the Bishop must be turn'd General, or Colonel at least: For by *Neynoe's* Information and *Plunket's* Cypher, Sadlers and Sables were *Irish* Soldiers and Regiments.

As to the third Time assign'd for raising a Rebellion, at the *Breaking up of the Camp*, there was no Pretence of Evidence; so that there was no Foundation for that Part of the Preamble, which charges the Bishop, with being deeply concern'd in forming, directing and carrying on the Conspiracy.

The next Charge is, That he was concern'd in a Correspondence abroad, and some Transactions at home, for bringing in the Pretender.

But there is not one Witness of any criminal Act done by the Bishop; and though all his Papers were seiz'd, not any Letter or Paper under his Hand, of a criminal Nature; nor any Meeting or Consultation with any Persons charg'd, unless as a Member of the *Burford* Club, which was never heard of till *Layer's* Trial; and this Accusation, he (Sir *Con.*) knew to be false.

This Charge was founded purely upon the Hearsay of *Pancier* and *Neynoe*: *Pancier* depos'd, That *Skeene* told him, the Bishop of *Rocheſter* and Lord *North* had the principal Direction of the Conspiracy; That 200,000*l.* was rais'd by Contribution, and put into the Bishop's Hands, and call'd *The Military Chest*; but could it be imagin'd so much Money should be rais'd among the *Jacobites*; or that if it was rais'd, not one Contributor should be discover'd, or that the Bi-
shop

shop would take the Charge of it, and run the Hazard he must do in having it under his Care: And it was observable, that *Skeene*, who was supposed to have said this, was now in Custody, and offered to deny every Word of it upon his Oath.

That *Neynoe* speaks only of what *Kelly* told him, which could not affect the Bishop; nor were his Examinations upon Oath, or so much as sign'd by him; all of them taken after he was in Custody, under great Terror and Apprehensions, and one of them taken but the Day before he drown'd himself; That only one of his three Examinations had been read; but they should desire all Three might be produc'd; and then they might see if some material Things had not been omitted, or if there was not such Inconsistencies in them as would destroy their Credit; for in one Place he said, *Kelly* told him the Cyphers were for carrying on a Correspondence with the Pretender, and in another, he says, that *Kelly* never open'd himself as to the Plot; so that it must be concluded, either that there was no treasonable Correspondence carry'd on by *Kelly*, or that *Neynoe* was not so intimate with *Kelly* as he pretended.

Neynoe said he drew up three Memorials by the Order of *Henry Watson*, whom he took to be the Earl Marshal, and that he lay with him several Nights; but it was strange the Earl Marshal should trust a Stranger to draw these Memorials, for 5000 Men to invade the Kingdom, and afterwards trust himself with him for several Nights: In one of them he says, the Heads of these Memorials were given him by *Kelly* and *Watson*; in another, that they were all drawn by *Watson*: But it was strange *Neynoe* had not any rough Draught of them to produce. Page 401.

The Committee, in their Report, had observ'd, That *Neynoe* confess'd, in his Examinations, that he had endeavour'd to create a Diffidence and Suspicion among his Majesty's Servants; and what Credit could be given to one who had so little Regard to Truth, as to say the falsest Things to so wicked a Purpose.

The

The next Charge against the Bishop, were the three Letters of the 20th of *April*, sign'd *Jones*, *Illington*, and 1378, said to be wrote by *Kelly*, and dictated by the Bishop; but there was nothing criminal in any one of them: Nor was it a Crime to write to the Lord *Marr* or *Dillon*, supposing they were meant by *Chivers* and *Musgrave*; for as to the Lord *Marr*, he had quitted the Pretender's Service many Years, and had a Pension from his Majesty till after the Date of these Letters: Indeed, if by *Jackson* was meant the Pretender, it would be Treason to write to him; but as it would appear that the Bishop could neither write or dictate these Letters, the whole Charge founded upon them must fall to the Ground.

These Letters ought to have been printed in the Cyphers and Characters *in which they were written*, and also *as they are decypher'd*, and then the Persons accus'd might have employ'd Men skill'd in that Art to see if they were truly decypher'd; as was done in *Coleman's Case*: It is impossible for a Man suddenly, at the Bar, to tell whether a Letter be rightly decypher'd, or not; so that all that a Man has in the World must depend upon the Skill and Integrity of the Decyphers his Accusers employ, who admit at the same Time that there are some Words in the Letters which they could not decypher, and which might give a Turn to the Sense. Nay, Mr. *Wills* said, that one of the Numbers he could not decypher, stood for two Words; he was likewise pleas'd to say, It was impossible that the Number he could not decypher, could make any Alteration in the Sense, which was very extraordinary for a Man to swear; for if one Word could not make an Alteration in the Sense, surely two might—— But to proceed to the Proofs that are brought to shew the Bishop dictated these Letters: They say the Person who wrote them speaks of himself as being in *ill Health*; in great Pain, and under some sad and melancholy Circumstances: These, 'twas said, were such Circumstances as did not happen

happen to *any two Men* in the World at that Time; but he believed there was another Circumstance which did not happen to any one Man in the World, which was, his Writing a Letter of Politicks when his Wife lay a Dying.

Why these Circumstances should necessarily intend the Bishop more than any other Person that was sick and under Misfortunes, he could not apprehend. That ill Health must necessarily imply the Gout, and that it must be intended that no Man had the Gout the 20th of *April*, but the Bishop: That melancholy Circumstances necessarily imply'd a Man's being sick, or dying; and that no Man had a Wife sick, or dying, but the Bishop, was a new Way of arguing.

They endeavour also to prove, That the Bishop wrote those Letters, because one is subscrib'd *Jones* and another *Illington*; because they say the Bishop went by those Names; but of this there is not any *Pretence of Evidence*. Page 402.

The third Letter is subscrib'd 1378, which the Decyphers say, denotes a Person whose proper Name begins with an *R*, from whence they infer it must be the Bishop. Now, why 1378, denotes a Person whose Name begins with an *R*, the Decyphers only know; and they were as much at a Loss to know, Why a Name beginning with an *R*, must intend the Bishop of *Rocheſter*.

It appears also, That *Jones* and *Illington* are not the same Person; for in the Letter of the 10th of *May*, from *Hatfield* to *Howel*, they are distinguish'd: In one Line he says, *Jones* promiſeth to be a good Customer, and in the next Line but one he ſaith ——— *Illington* is gone into the Country. Beſides, in Papers that mention the Duke of *Norfolk*, his Grace is denoted by the Name of *Jones*. In *Layr's* Liſt, Sir *William Ellis* is denoted by that Name; and in *Plunket's* Liſt, *Jones* ſtood for the *Germans*,

The Evidence to prove *Jones* and *Illington* to denote the Bishop, and the Intimacy between the Bishop and *Kelly*, is the Preſent of a Dog call'd *Harlequin*: *Hatfield*, in his Letter to *Howel* of the

the 30th of *April*, says, *Mrs. Jones* died last Week; pray present my Respects to *Musgrave (Marr)*, and let him know I receiv'd the Present sent by the young Lady; That he had a Leg broken in the Journey: However, I will take all the Care imaginable of him, and inform *Mr. Jones* of it, to whom I know any Thing from that Quarter will be acceptable—— *Hatfield* in his Letter to *Musgrave* of 7 *May*, 1722. says, *Mrs. Illington* is in great Tribulation for poor *Harlequin*: However, his Obligations to the Lady are as great as if he had come safe—— From whence 'tis inferr'd, that the Bishop is meant by *Jones* and *Illington*; and that a young Lady sent the Dog to *Kelly* as a Present for the Bishop; to inforce which, *Mrs. Barnes's* Examination is produc'd, who says, *Kelly* told her the Dog was for the Bishop; but both the Bishop and *Mr. Kelly* solemnly deny'd it, and instead of its being a Present from a young Lady to the Bishop, *Kelly* says, he bought it of a Surgeon at *Paris*, to give to *Mrs. Barnes*, and she accordingly had it.

He observ'd further, That there was an Expression in the Letter of the 7th of *May*, that seem'd to enervate and destroy the Force of all those Letters relating to the Dog; for it being written four or five Days after the Bishop's Lady was buried, it says, *Mrs. Illington* is in great Tribulation for poor *Harlequin*: Now, could it be supposed, that *Mr. Kelly*, a Friend of the Bishop's, could be guilty of so foolish and ridiculous an Expression, as to say of one of the Bishop's Character, who was in the utmost Affliction for his Lady, That he was in great Tribulation for the Breaking of a Dog's Leg; 'twas evident, that he who wrote that Letter, did not know the Bishop's melancholy Circumstances; besides, 'twas well known, the Bishop never lov'd a Dog, or ever had one.

The next Method of proving these Letters to be the Bishop's, was by Similitude of Hands; but since *Sidney* was convicted on such Evidence, and for that Reason his Attainder revers'd in Parliament,

liament, he hoped their Lordships would not, in their legislative Capacity, admit that to be Evidence, which in the same Capacity they had condemn'd. In *Crosby's Case*, Anno 1695, who was indicted for Writing treasonable Letters, and the Evidence was Similitude of Hands; the Evidences were disallow'd by the Chief Justice *Holt*, and *Crosby* was acquitted.

In *Francia's Case*, the Lord Chief Baron *Bury* declared Similitude of Hands to be no Evidence; and if it was not admitted in those Cases where Papers were produc'd, and prov'd to be their own Hand-writing, and compar'd with the Papers suppos'd to be criminal; they hop'd their Lordships would not allow it in this, where it was carry'd much farther.

Here three Clerks of the Post-Office swear, That the 20th of *April*, 1720. these three Letters were opened, That they took Copies of them, seal'd them up again, and sent them forward; That four Months after another Letter came to the Office, and was stopp'd; and they swear, They believe the three Letters were of the same Hand-writing with the Letter stopp'd: Now, that Men who never saw a Hand but once, and thro' whose Hands so many Letters pass in a Month, should be able to swear, That three Letters which were sent in *April*, 1720. were of the same Hand-writing with a Letter sent four Months after, was strange and incredible—— Besides, the Clerks own'd, that they did not compare the Copies with the Original, and a Copy was never allow'd to be read in Evidence, unless the Person who produc'd it, swore he compar'd it with the Original, and it was a true Copy.

They should shew, That at the Time these three Letters were said to be written, the Bishop was at *Bromley* in *Kent*, and so lame of the Gout he could neither stir Hand or Foot, and that *Kelly* was not at *Bromley* during that Time.

In the Report, p. 50. The Committee took Notice, that on the 11th of *June*, *Kelly* sent his Friends at *Paris* an Account of his late Misfortunes;

tunes; and after complaining of the Neglect in not bailing him sooner, says, *Your old Friend Rig, indeed, offer'd all that could be expected from the poor Man*; and infer, that by *Rig* is meant the Bishop of *Rocheſter*—— But could it be imagin'd *Kelly* would call the Bishop *Gerrard's* old Friend, when it is not pretended he ever knew him: And if *poor Man* was to be taken in the Way of Contempt, could it be ſuppoſed Mr. *Kelly*, a Gentleman of that good Senſe and Breeding, would uſe ſuch an Expreſſion of the Biſhop; beſides, how could he who is ſuppoſed to have 200,000 *l.* Contribution-money in his Hand, be ſaid to be poor: Therefore *Rig* could not be intended by the Biſhop; nor could any Credit be given to cant Names, for the ſame Names are uſed for ſeveral Perſons; *Laws* in *Plunket's* Cypher ſtands for *Marr*; *Hawksby* in *Plunket's* Cypher for King *George*; and in the Report 62, there are Compliments from the Pretender and his Spouſe to *Hawksby*; which could not be preſum'd to mean his Majeſty.

Jackson could not mean the Pretender, for *Chivers* adviſes the Money to be divided equally between *Medley*, (*Ormond*) and *Jackson*; and no Perſon devoted to the Pretender's Intereſt, would have put *Ormond* before the Pretender; *Jackson* ſtood for the Pretender only in *Plunket's* Liſt, and yet *Plunket* calls him *Joſeph* and *Jephſon*, and not *Jackson*, and in all the voluminous Correſpondence charg'd on *Kelly*, he is not once call'd *Jackson*.

The Letter to *Dubois* was at firſt taken to be writ to the Biſhop, and after a Month's Conſideration, they ſuppoſe it to be writ by the Biſhop; but it was ſtrange he ſhould keep a Letter ſeal'd by him, which he wrote ſeven Months before; and it was ſtranger ſtill, that the Biſhop ſhould mention the Name of the very Perſon in it (*Johnſon*) by whom it was ſuppos'd to carry on the Correſpondence.

That ſo many Letters were found, written before 1712, and ſo few ſince, was occaſion'd by his Lord-

Lordship's being engaged in a Correspondence about Matters of Learning at that Time, and his being troubled with the Gout since; which had disabled him to write; besides, he was made Bishop and Dean of *Westminster* in 1713, and had not Time to write much himself, but kept a Secretary.

As for the Letters sent to the Bishop, one from *Motfield* (*Marr*) to *Illington* of the 11th, and the other from *Digby* (*Dillon*) to Mrs. *Weston* of the 25th of *July*; it is not pretended that those Letters were receiv'd, consequently they were stopp'd, and ought to be produc'd, and the Hands prov'd

—— The first is a Letter of Condolance; and it is inferr'd, it must be to the Bishop, because his Wife died a little before; and because, when 'tis said, we must submit with Resignation, it is added, *You know such Things better than I do.* But what Weight such Reasoning ought to have in criminal Prosecutions, was submitted to their Lordships.

One Way of fixing the intercepted Correspondence and cant Names on the Bishop, was by the Co-incidence of Times, and other Circumstances, as his being in and out of Town; but there were several Mistakes in them; for in *Hatfield's* Letter to *Musgrave* of the 7th of *May*, he says, Mr. *Jones* is come to Town for a Day; whereas the Bishop came to Town on the 5th of *May*, and did not go out of Town till the 10th—— In the Letter from *J. H.* to *Dixwell* the 18th of *June*, 'tis said Mr. *Rig* and *Rep* are in the Country, whereas the Bishop (*Rig*) was then in Town; the same Mistake is made in a Letter to *Mason-neuve* the 19th of *July*, &c. And yet these Circumstances, with *Neynoe's* Declaration that *Kelly* told him the Bishop went by the Name of *Jones* and *Carte*; That he went by the Name of *Illington*, contain the whole Proof of the Bishop's Correspondence by those Names; and their Lordships would never think this sufficient Evidence to deprive a Reverend Prelate of all his Preferments, and send him into Banishment: He observ'd further,

ther, That this Charge was supported only by *Innuendo's*; and with what an Eye *Innuendo's* had been always look'd upon, many Instances might be given: Sir *James Barnardiston*, Anno 1683, was prosecuted for writing seditious Letters, convicted and fin'd 10000*l.* but on a Writ of Error brought in this House, their Lordships reversed the Judgment; for that the Information being grounded on Letters, which in themselves were not criminal, but made so by *Innuendo's* and forc'd Constructions, ought not to be allow'd; for all Accusations should be plain, and the Crimes ascertain'd: Now, if the Bishop should be supposed to have writ these Letters; they were not criminal in themselves, nor could be made so, but by *Innuendo's* and forc'd Constructions; nay, there was not one Part of the Charge otherwise maintain'd.

To instance only in one Letter of the 20th of *April*, which, with the *Innuendo's*, runs thus:
 ' 1378, *Innuendo* a Person whose proper Name be-
 ' gins with an *R*, *Innuendo* the Bishop of *Roche-*
 ' *chester*, did write to Mr. *Jackson*, *Innuendo* the
 ' Pretender; That notwithstanding this Opportu-
 ' nity, *Innuendo* an Opportunity of raising a Re-
 ' bellion in *England* at the Time of Elections of
 ' Members of Parliament, had elaps'd; I, *Innu-*
 ' *endo* the Bishop, agree with you, *Innuendo* the
 ' Pretender, that another, *Innuendo* another Op-
 ' portunity of raising a Rebellion in *England*, may
 ' offer before the End of the Year, *Innuendo* at
 ' the Breaking up of the Camp.'

Here was a Superfetation of *Innuendo's* to support this Charge; and he hop'd the same Reasons that induc'd their Lordships to reverse the Judgment against Sir *Sam. Barnardiston*, would prevail on them to reject this Bill.

That Men's Lives and Properties were to be determined by legal Proof; and when their Lordships proceeded in their legislative Capacity in other Instances, he apprehended they proceeded according to the Rules of Law; as in Bills for enabling Persons to sell or settle their Estates; or
 I for

for making Rivers navigable: If the Title or Property of any Person came in question, their Lordships would hold the Parties to legal Proof; and why not in Bills of Attainder, which were of far greater Moment than Bills for enabling Persons to settle their Estates?—— He apprehended their Legislative and Judicial Capacities were here so united, that they could not be separated: For a Bill of Attainder was a Condemnation by Parliament; and their Lordships always heard and judged, whether the Party was guilty before they condemn'd him: And why should their Lordships determine upon less Proof in one Capacity than in the other?

When a Man fled from Justice he gave Judgment against himself; and where a Person corrupted or conveyed away the Witnesses, he was himself the Occasion that legal Proof could not be had, and that might be a Reason why less Proof should be admitted; but where there was nothing of this Kind to say, that less than legal Proof was sufficient for a Bill of Attainder, was to affirm that PRIVATE OPINION without Proof, was a sufficient Foundation for passing such a Bill; and if Men's Rights and Estates were to be determin'd by private Opinion, how precarious would the Properties of *Englishmen* be: The most innocent Man could not be safe; the wisest Man could not foresee where it would end, and *England* must no longer boast the Excellency of her Constitution.

It was a Rule both in Law and Reason, That *Nemo bis puniri debet pro eodem Delicto*: And yet that might happen to be the Bishop's Case; for the Charge of the Bill was general: Intending to raise a *Rebellion*, and holding *treasonable Correspondence*, in order to bring in foreign Forces, but no *particular Fact* charg'd upon him; now, if he should be indicted for either of these Species of Treason, and particular Overt Acts of such Treason should be alledged, as Buying Arms, and Lifting Men for the Pretender, he might be condemn'd and executed for it; for he

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could not plead this Bill in Bar to such Indictment, because the Indictment would not be for the same Facts, there being no particular Facts charg'd here; as in the Cases of Mr. *Hampden* and *Fitzharris*—— Mr. *Hampden* was try'd for meeting and consulting to raise a Rebellion, and fin'd 40000*l.* and afterwards try'd for High Treason for the same Fact—— *Fitzharris* was indicted for High Treason, and pleaded an Impeachment, and averred, it was for the same Fact; but the Plea was over-ruled; for there being no particular Article, the Averment could not be supported.

Mr. *Wynne* the Bishop's other Counsel, makes his Observations on the Charge and the Evidence.

Mr. *Wynne* being also of Counsel for the Bishop, made his Observations on the Nature of the Charge, and the Evidence that had been produc'd against him.

He said this Reverend Prelate seem'd desirous of making his Defence by such weak Hands as his, who had never before appear'd at their Lordships Bar; as if he was perswaded his Cause need-ed not the Assistance of Art or Experience, in order to move the Passions, or impose upon the Reason of his Hearers.

That tho' it was his Lordship's Misfortune to be already prejudg'd in another Place, and to be condemn'd by some few vulgar mislead Apprehensions; he hop'd better Things from that House.

He might enlarge upon the Injustice of Laws made *ex post facto*, and for one particular Case or Person, and no other; That they were against Common Law and Common Right, which every one was entitled to in the Community where he liv'd; because Laws in their Nature ought to be Rules for the general Order and good of Society; natural Justice would induce them to demand, against what Law hath he transgress'd? And if there be no such Law yet in Being, or no such Proof as the Law requir'd, to suppose him guilty; their Lordships would not introduce a new Law or a new Sort of Proof to make him so: In vain did the Legislature every Session provide Laws,
if

if a particular Law or a particular Proof was still to be made for every particular Purpose ; not only contrary to the Tenor of all the former, but what was never to be a Law for the Future in any other Case.

That one of the greatest Excellencies of the Laws of *England*, beyond that of other Nations, had been always esteemed the common and ordinary Method of Trial: It had always been accounted the Birth-right of *Englishmen*, to be try'd *per pares*, according to the known Course of Law—— It was insinuated by the Counsel for the Bill, and indeed by the Bill it self, that this was an extraordinary Case, and requir'd an extraordinary Remedy ; but if such a cruel artificial Suggestion was allow'd to be a good Reason to deprive a Man of the Benefit of the Law, no Man's Life or Liberty was safe ; the same might be suggested of every Offender ; That he endeavoured to evade the Punishment of the Law, when he pleaded Not guilty, and insisted on a Trial. Page 407,

There had been too many Instances, he confess'd, of Bills of this Nature ; but those that could be justified of them might be reduc'd to a small Number: Those few Sacrifices that had been made to the Heat and Necessity of the Times, had been most of them revers'd with Infamy and Detestation, when Men were cool and at Liberty to hearken to the Voice of Law and Reason, and began to consider, they had only prepar'd Shackles for themselves.

In all sober regular Times, a free Trial in the ordinary Course of Law had seldom been denied, even where the Facts had been so notorious as almost to need no Trial, and so evident as to need no Proof ; even the Regicides, except such as fled from Justice, were admitted to a Trial, and heard with Patience in the ordinary Course ; and *Felton*, who stabb'd a prime Minister in the Execution of a High Commission, and justified the Fact in a most daring impious Manner, was brought to Trial without superseding any of the ordinary Methods of Justice. Page 408,

What Opinion subsequent Parliaments had of the Lord *Strafford's* Attainder, appear'd from the Act of Reversal, which order'd all the Records and Proceedings relating to it, to be cancell'd and destroy'd, that no Remains of so evil and unjust a Precedent might be visible in after Ages, or brought into Example, to the Prejudice of any one; but even in that detestable Instance, such Informations and Evidence were not admitted, as in this: The Witnesses were examin'd *Viva voce* upon Oath, and he was first adjudg'd guilty by Way of Impeachment at the Bar of the Lord's House, before a Bill was order'd. The same Method was observ'd in the Case of Archbishop *Laud*: And if it had not been so, even that House of Commons, bad as they were, and as thirsty as they were after the Blood of those noble Lords probably would not have order'd those Bills; and it was well known in History, what desperate Measures were used to induce the Lords to pass that against the Archbishop; and at last, not more than seven of their Lordships were present when it pass'd: But if this Bill should pass, they must no longer blame and condemn those Instances: For this would in effect re-enact them, and many others, which the Wisdom of former Parliaments had revers'd, with Marks of Infamy and Detestation.

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Nor was there that Reason for a Bill of Attainder here, as in Sir *John Fenwick's* Case: Here had been no Attempt to withdraw from Justice, tho' the Committee observ'd, that his Lordship had Notice he was to be apprehended some considerable Time before he was; nor had there been any preceding Trial where the Bishop's Name was mention'd as an Agent; much less as this Bill suggests, a Principal Manager and Director in the Conspiracy; nor in that one Trial which had been, did any Thing appear that could derive the least Suspicion of Guilt upon him; so far was he from having used any Artifice to protract his Trial in the ordinary Course of Law, That he had applied in all Courts, in the most earnest and legal Manner, to be brought to Trial, which

which was a strong Proof of his Innocence: Here was not one positive Witness against his Lordship, nor the Sanction of an Oath here, or any where else, in any one material Point against him; so that it had no Manner of Resemblance to Sir *John Fenwick's* Case; he hop'd therefore, after so long and full a Discovery of the Conspiracy, and such Preparations as had been made against it, the Danger could not be so great or cogent, as to require so precipitate a Resolution: His Person, their Lordships saw, was safe and forth-coming, and the Courts of Law open, and fill'd with such learned and resolute Judges as were able to deal with the boldest and most daring Offender; there could be no Reason therefore for their Lordships to exert themselves in so extraordinary a Manner at this Time: And if this Method became familiar, it might put an End to their Lordships Judicature, which they had ever been so jealous of: For the Lower House would not care to appear before their Lordships as Prosecutors or Accusers, when they could so easily partake of their Judicial Capacity: How much more proper would it have been for the Lower House to have left this Matter entire to their Lordships; it having been so often resolved by their Lordships Predecessors, That the House of Commons had no Power of Judicature or Coercion against any one, but in Matters concerning that House; whereas this was a Case of Peerage, the Exclusion and Punishment of a Member of the Lords House.

And surely the Lords of that Reverend Bench Page 410.
would consider what a fatal Blow this Bill would give to the Discipline and Polity of the Church of *England*. They had more than ordinary Reason to be jealous of increasing such Precedents, and of introducing Methods of depriving Bishops and Deans, hardly known to former Ages: A Time had been when their Lordships Predecessors were all excluded and sequestred; and it had been attempted, even since the Restoration, to take away Deans and Chapters: He was far from apprehending any such Thing at present, and he
H 3 thought

thought as little of such a Bill as was now before them, to deprive a Bishop and Dean at once, not only of all his Dignities and Benefices, but from the Exercise of any Part of his holy Office and Function; but if this Bill should pass by their Lordships Assent, such a Design would be rendred more easy and familiar, and they would be much more unpitied by all Mankind.

He could not but observe with what Caution and Moderation other Parliaments had proceeded, even where they thought fit to exercise their Legislative Authority: When an Act was made for the Imprisonment of *Counter*, and others concern'd in the Assassination-Plot, *Anno 8 W. 3. c. 5.* against all of whom there was some positive Evidence upon Oath; they did not think fit, at one Stroke, to deprive them of all the Necessaries of Life: The first Step the Parliament took was to pass an Act for the Detainment of them, for the Space of one Year only; not the Forfeiture of all they were worth, and the Exclusion from his Majesty's Mercy, as in this Case; but a discretionary Power was left to any Six of the Privy Council, to bail them within that Time, if it was thought proper: Then further Obstinacy and Impenitency occasion'd another Act *9 W. 3. c. 4.* to detain them a Year longer, but still under the like Exception: And in the End, Acts were made for detaining them during the Pleasure of the Crown; so moderate were the Steps taken, even in that bold and wicked Conspiracy.

And in the last Parliament, when there was so general a Cry for Justice, when the Necessity of the Time seem'd to require a more speedy and extraordinary Degree of Punishment than the Common Law was acquainted with; With what Difficulty, with what slow Paces, and with how many tender Circumstances did that Bill pass against the late *South-Sea* Directors? and yet what a State of Confusion had they reduc'd the Kingdom to? How many Thousands still feel the pernicious Effects of that Scheme? Though their Crimes had no particular Appellation or determinate Punishment

ment in our Law ; yet the Civil Law, and the Laws of other Nations told us, That *Crimen Peculatus*, the Robbery of the publick Money, was such an infamous Transgression, that the Punishment of it was Death, both in the Principal and Accessaries : And yet how mild was the Punishment inflicted by Parliament ; how tenderly and sparingly had that Law been executed upon them ? And how much did they still enjoy of the Spoils and Plunder of the Nation.

Let us then follow the prudent Precedents of moderate Times, and not be ambitious to surpass the Proceedings of Violent and Arbitrary Men, which we and our Posterity might have cause to repent : Let us imitate such as are agreeable to our Laws and Constitution, such as are grounded upon Reason and the Principles of Justice.

As to the general Allegations in this Bill, That there had been a Conspiracy form'd and carry'd on by some Persons abroad, and others at home, they should not controvert, since it had been so solemnly resolv'd by both Houses of Parliament ; nor could they deny, but that Mr. *Layer* had been try'd, convicted and attainted for it ; but they were yet to seek, how these Things had any Relation to the Bishop, or how *Layer's* Case came to be connected with this, and made Part of the Bill against his Lordship : There was no Mention of the Bishop's Name in that Trial, nor any Grounds to think, from any of Mr. *Layer's* Papers or Examinations, that his Lordship was privy to, or in the least acquainted with his Person or Intentions ; That his Lordship was as much amaz'd at the Rashness and Folly of his Schemes, as he detested the Wickedness of them, though it was his Misfortune to be charg'd in this Bill, as the Principal Director and Contriver of those Schemes, for which that Gentleman had been convicted : And he was as much at a Loss to imagine, why *Plunket's* Cyphers and Papers should be given in Evidence against the Bishop, since his Lordship is not so much as charg'd with any Intercourse or Correspondence with *Plunket* : It was strange,

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that People's Thoughts and Intentions, so widely distant in all other Respects, should center in such wild and unnatural Projects, without some previous Discourse, some Consultations or Acquaintance one with the other.

They hop'd, That notwithstanding all that had been alledg'd against this Reverend Prelate, he could still say, not only in the Form of Law, but boldly, and with a safe Conscience, That he was not guilty of any one of the Charges contain'd in the Bill: He could still say, That he had not acted in direct Violation of his Oaths and Obligations, nor to the Scandal of Religion, or his Holy Function; which he should not say, if he did not think they had a full and positive Answer to every Thing that had been said; unless he was verily persuaded they had sufficient and legal Proof to encounter all that had been offer'd on the other Side; or unless his Instructions had told him, That many Things in their Evidence were utterly false and groundless.

One Thing he took for granted from the Nature of the Evidence that had been offer'd, namely, that it was admitted by the Counsel for the Bill, That there was no legal Evidence against his Lordship, or else this extraordinary Method of Proceeding, and this new Sort of Evidence had never been set up: And he was sure it was a Kind of Force upon those learned Gentlemen, so well vers'd in Methods and Notions of Law, to maintain so many gross Paradoxes, which had not the least Colour of Legal or even Reasonable Evidence.

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He desir'd their Lordships would consider what had been offer'd them under the Name of Evidence. Where Words had been capable, and sometimes where they had not been capable of two Senses, an Arbitrary and Invidious Interpretation had been put upon them. Where Words were plain and proper for the Occasion, and which consider'd by themselves, it was impossible to put a criminal Gloss upon; the Writer was suppos'd to have some mysterious Meaning; or they were complicated and thrown together with those which
would

would infer some criminal Meaning. Letters to be inform'd of the Distempers of a Friend, and the Doctor's Opinion upon it, &c. by a strange and arbitrary Construction, are applied to explain very different Purposes; and, as if they were suspicious even of their own Suspicions, and distrustful of such Explications, they call to their Aid several disjointed Fragments, Extracts and Scraps of Papers, which no Man but themselves could tell what to make of. And when there happen'd some Words which could not be reconcil'd with such a Construction, or the Uses they would make of them, they were totally omitted; and it was said, they were not material, or not yet decypher'd, or not legible in the Original; but 'twas insinuated they must mean something criminal.

He then proceeds to Particulars, and observes, That the Charge against the Bishop was founded, either; 1. Upon Hearsays. 2. The three Letters said to be dictated by his Lordship, and wrote by *Kelly* to Lord *Marr*, *Dillon*, and the Pretender. The Foundation of the Charge against the Bishop.

3. On two Letters, said to be wrote to the Bishop; and, 4. The Co-incidences of Circumstances, Times and Names in the intercepted Correspondence to induce a Belief of the said Hearsays and suppos'd Facts. Page 413.

1st, And first as to *Pancier's* and *Neynoe's* Informations, which were all mere Hearsay: All that *Pancier* says relating to the Bishop is, That he had the Principal Direction of the Conspiracy, and that 200,000*l.* had been rais'd and lodg'd in his Hands. Page 414.

This Accusation they thought was absurd, and even incredible, That 200,000*l.* could be rais'd and deposited in one Man's Hands, and yet not trac'd up to some of the Contributors, or to the Hand where it was deposited.

As to *Neynoe's* four Examinations, none of them were sworn or sign'd; two of them were without a Date, one of which appear'd manifestly to have been taken after he was seiz'd; That on the 27th of *September*, was on the Day before he drown'd himself, and both when he was known to be

be under the greatest Terrors and Apprehensions, for not being able to make good what he had undertaken, and was required of him; and in one of these Examinations, it is not said before whom it was taken: Another of them, and the only one they thought fit to produce as Evidence, was an Extract from the other three Papers, said to contain the Substance of them; but the Papers themselves, out of which it was extracted, were not produced; and by the Examination of a Man, thus taken to Pieces, with the Antecedents and Consequents left out, Treason might be made, and inferr'd from the most innocent Expressions: But his Examinations, as they lay in the Appendix, were full of Inconsistences and Absurdities. (Here he repeats the Inconsistences already mentioned by Sir *Cons. Phipps*) And after all, both his and *Pancier's* Depositions were only Hearsay; which was never allowed, as Evidence, in any Court in the World. And there is this further to be observed, That the Persons of whom 'tis pretended they heard all this, and into whose Testimony it must all be resolv'd, are yet both living; and so far from supporting what 'tis pretended they have said, that they deny every Word of it: And as this is the principal Part of the Proof, if this Foundation be taken away, all the mighty Superstructure raised upon it must fall to the Ground, and all their corroborating Proofs and concurring Circumstances must come to nothing.

Page 415.

2dly, The second Head of Accusation, is three Letters supposed to be dictated the 20th of *April*, by the Bishop to *Dillon*, *Marr*, and the Pretender.

Before he spoke to the Letters themselves, he observed, That they were said to be inclosed in a Letter from *Kelly* himself, sent by the ordinary Post, and signed with a Name, they say, he usually went by (*Johnson*); which seemed very improbable, and inconsistent with that Caution and Subtilty, all along insinuated in this Correspondence; and besides, Mr. *Gordon* of *Bologn*, to whom they are said to be directed, (an indifferent Person

Person in the Case, and under no Influence) had attested upon Oath, that no such Letter, or Packet, ever came to his Hands.

And supposing these Letters to be sent and dictated, as is charged, there is nothing in them that was criminal; and they were not to be made so by *Innuendo's* and Implications, as was resolved in the Case of Sir *Samuel Barnardiston*, and others, mentioned by Sir *Constantine*. This was a sufficient Answer as to the first two Letters; but if *Jackson* had been proved to be the Pretender, the writing to him indeed would be High Treason; but that the Pretender could not be understood by that Name, they hop'd, to make very evident. Page 416.

He consider'd next the Nature of the Proofs, to induce their Lordships, to believe that these Letters were dictated by the Bishop; and the first was, because the Matter of them agreed with his Lordship's Circumstances at that Time, (*viz.*) His being ill of the Gout, and the approaching Death of his Lady; which, 'twas said, was morally impossible could suit so exactly to any Man else. And it must be acknowledged these two Circumstances were agreeable to those his Lordship was then under; but they are Circumstances so melancholly in themselves, that they might have been spared, especially considering the little Advantage that could be made of them. But these Circumstances were no Secrets; every Body that knew his Lordship must know them; and whoever wrote those Letters, with a Design to have them intercepted and imputed to his Lordship, would certainly mention such Circumstances, as might be naturally thought to describe him.

Another Proof brought to shew they were dictated by the Bishop was, from the Subscription of the Names *Jones, Illington*, and the N^o. 1378, which all affirmed to denote his Lordship; and the Reason assigned why that Number should belong to him was, because the Decypherer had found that Number to denote the proper Name or Title of a Person beginning with the Letter R.
but

but if this were really so, Was there Nobody else whose Name or Title began with the same Letter ; but even that must be merely Matter of Conjecture ? Dr. *Wallis*, the Father of this Science, such as it was, own'd that the Whole was built upon Conjectures, and that he that had the best Guess, was the best Artist. Mr. *Willes* 'twas plain was not so infallible, as he pretended to be, by that Number of Passages not yet decypher'd ; and since the Decypherer had not shewn by what Methods he arrived at that Conclusion, it was impossible for them, by any positive or direct Evidence, to confute it ; but it was sufficient for them to deny on the one Hand, what he affirmed on the other without giving his Reasons.

page 417.

Another Way of proving these Letters to be the Bishop's is, that they are supposed to be *Kelly's* Hand-writing, who is supposed to be his Lordship's Secretary in these Matters. The Hand is attempted to be proved by the Clerks of the *Post-Office*, who are said to have opened and copied them : He did not know by what Authority they took such Copies, though they might open and detain them ; for all such Acts as were a Restraint on Trade and Commerce, were to be construed strictly and literally ; but it could never be inferr'd that such Copies should be receiv'd as Evidence in Courts of Judicature, not only against the Writer himself, but other Persons : Never was a Copy of any Thing allowed as Evidence, but what was made by a proper sworn Officer, known in Law, and where every one might have Access to it, that if false it might be disprov'd ; but in this Case, How can the Party have an Opportunity to disprove it, if falsely copied, the Original being sent forward ? The Clerks have deposed, That the Originals were written in the same Hand with some Papers shew'd them, and which they were told, were Mr. *Kelly's* Hand-writing. The first Time they deposed this was the 24th of *August*, and the other the 1st of *January* ; the one four Months, and the other eight Months, after they had seen the Originals of the 20th of *April* preceding ; so
that

that it rests upon the Memory of the Clerks for four or eight Months : How was it possible after so long a Time, exactly and nicely, to remember all the little Strokes and Dashes of the Pen, by which the Sameness or Diversity of Hands could only be made out.

And as to the Persons that swear the Original to be *Kelly's* Hand, *Malone* swears he believes it to be *Mr. Kelly's* Hand ; and 'tis observable, that this Deposition was made but in *January* last, and he left *Mrs. Barnes's* Service in *May* before ; nor does he say he ever read any of *Mr. Kelly's* Writing, unless the Superscription of a Letter he had seen him write at some Distance, as he came in or out of a Room ; but that could not be sufficient to form a Judgment of a Man's Hand-writing, especially after nine Months Time. And *Hutchins*, the Messenger, swears the same Thing only from seeing a Superscription of a Letter to the Secretary of State : But had they been more familiarly acquainted with *Mr. Kelly's* Hand, this Page 418. would not be allowed a sufficient, or even a reasonable Proof in a criminal Case : (Here he mentioned *Sidney's*, and the other Cases cited by Sir *Constantine*) and he cited some foreign Authorities, to shew, that the Reason and Equity of this Doctrine had been uniform and universal : And first, the Famous Case of *Jean Millard*, in a Book call'd *Le Journal de palais* : He had lived forty Years from his Wife, and then returned, and reclaimed her after she was married to another ; and one of the Proofs he brought that he was the same Person, was the Hand-writing of Letters that had formerly passed between them ; which occasioned this Question before all the principal Judicatures of *France*, *Whether the Testimony of skilful Notaries, who fully deposed of the Similitude of Hands, was a sufficient Proof in this Case ;* and it was universally denied.

Codex fabrianus Lib. 4. Tit. 14. Def. 71, says,
A Proof by Comparison of Hands, is a very dangerous Proof ; *Idque in Causis civilibus duntaxat,*
sed

sed in criminalibus, in quibus periculum majus versatur aut capitis aut existimationis, non item.

Voet, an Eminent modern Civilian, *Lib. 22. Tom. 4. Sect. 11.* to the very same Purpose. And so does *Cujacius*, in his Commentary on the *Novels* 73. The *Romans*, says he, never allow'd it, but when no other Proof could be had. And in latter Times, when Forgeries became more frequent, they would not allow of it at all, unless the Writing had been acknowledged by the Party, or prov'd by two Witnesses, who saw him write it.

And then it was necessary to bring both into Court, that the Judges themselves might make the Comparison, and not leave the Witnesses to be the only Judges of it.

Nor was it ever known that any Evidence of the Similitude of Hands was admitted, unless the Papers pretended to be written in the same Hand, were produced and compared; which was so far from being the present Case, that the Attesting Clerks, who are the only Witnesses, never had an Opportunity of comparing the Original Letter, stopp'd in *August* last, with any one of the three Original Letters, dated the 20th of *April*; or with any of the intermediate Letters, which they affirm to have seen written in the same Hand: And if it was consider'd how much more difficult it was to distinguish the Hand of one writing in Figures, (which stand singly) from the Hand of one writing in Words at Length, their Lordships would not give them the least Degree of Credit. And to put an End to this Evidence, they should prove, that the only Original Letters stopp'd the 20th of *August*, at the *Post-Office* as a Sample, and the only Ground of affirming these Letters to be *Kelly's*, were not of his Hand-writing.

And had they been of *Kelly's* Writing, they must be proved to be written by his Direction, before they could affect him: And what Shadow of Proof had they produced of this, unless it were an obscure Passage, in a Letter of *Chitwell's* from abroad,

abroad, to one *Williams* here ; which says, *They had a Story in France of Weston's Clerk being laid up for Debt*, which they should shew could not possibly mean the Bishop. And from another Passage in a Letter to *Dubois*, the same Inference is made ; but what unknown Person this *Dubois* was, did not appear. The Committee supposed it a Letter to the Bishop, receiv'd from abroad, and from thence inferred it to be one of the Bishop's fictitious Names. The Counsel for the Bill supposed it to be a Letter from himself to himself, because the Hand is something like his Lordship's ; it is not sign'd by any one, and dated only the 16th of *December*, without a Year : Tho' the Committee were pleased to put the Year 1721, to it ; but for what appears, it might be writ before his Majesty's Accession, or before the several Acts of Grace, that have passed. Another Proof that it is his Letter, is, that it had a broken Seal, which, they say, was made by the Seal seized upon his Lordship's Servant : He hop'd their Lordships would consider how many Similitudes they were come to, *Similitude of Hands, Similitude of Figures, Similitude of Characters, and Similitude of Seals.*

That Similitude of Hands was no Proof they had shewn ; much less the Similitude of one single Letter in the Alphabet : This was a Conceit perfectly new. Artists 'twas well known might counterfeit any Man's Hand or Seal, that even the Person himself should not be able to distinguish it ; of which their Lordships saw an ample Specimen the Day before.

These were the Grounds on which it had been affirmed, that *Kelly* was his Lordship's Secretary in these Matters ; but there was not the least Pretence he had writ any other Letters for the Bishop, besides these three, and not one was charged to be written by *Carte*, who was charged as another Manager of this Correspondence ; but of this there ought to have been the fullest Proof and most undeniable Evidence ; for it was the Gift
of

of the Offence, and the particular Suggestion of the Bill.

Page 420.

To shew the little Intimacy there was between his Lordship and *Kelly*, (if *Rig* stands for the Bishop, as is supposed) appears by the Letter *E. 64.* where *Kelly*, the supposed Writer, says, *That Rig and one Skin had been together; but the Result of their Meeting he knew nothing of. Rig had fixed his Suspicion somewhere, though I cannot find out the Place; but you will hear it from Skin, to whom, 'tis probable, he may have communicated his Sentiments that Way:* From whence it is evident that *Kelly*, the supposed Secretary on all these Occasions, knew nothing of the Matter. And in another Letter, *fol. 59,* of the Report, *Kelly, the Writer, vows he never heard of the Cant Names of Jones and Illington, or who was meant by them; That some Persons, in whose Power it was to do for him, had shewn no Concern at all for his Misfortunes; That it was well he had no Secrets to reveal, since such Usage might provoke a passionate Man.* If this Letter was to be understood as from *Kelly*, he thought they were entitled to have the Benefit of this open and candid Declaration.

But the Bishop could not possibly dictate these Letters of the 20th of *April*; for he was then deprived of the Use of his Hands and Feet, confin'd to his Room under the greatest Weakness and Disorder, and his Lady lay in the next Room on her Death-bed; which Circumstances enabled his Servants, who attended him, to recollect themselves, and be very positive and particular in their Evidence as to this Point.

Three of his Men-Servants actually attending on him, and some one of them waiting Day and Night in the Room, or in the Passage at the Door, when the Bishop was not able, without their Help, to stir or lift any Thing he eat or drank, to his Mouth; and two Women Servants, who attended his Lady in the next Room, and came in frequently to let him know how she did: All these

five Servants were ready to depose, That for fourteen or fifteen Days before his Lady's Death, no Stranger whatever visited his Lordship, much less staid any Time with him; so that the Bishop could not possibly dictate these Letters to Mr. *Kelly*, or any Body else, without the Privy or Observation of some of them.

As to the third Charge, his Lordship's Receiving Letters from abroad, relating to the Conspiracy, they produced but two Instances of this Kind: The first from *Motfield* (*Marr*) of the 11th of *May*, addressed to *Illington*; the other from *Digby* (*Dillon*) of the 14th of *July*, addressed to Mrs. *Weston*; neither of which it was pretended ever came to his Lordship's Hands, or contained one criminal Expression. The first seem'd design'd for no other Purpose, but to fix on the Bishop the Letter directed to *Musgrave* of the 20th of *April*, the Receipt of which is there acknowledged; and in the Words of Condolence, it was pretended there was Something that pointed out his Lordship's Character and Function; but he did not see any Thing in it; if it be consider'd as a Letter of Compliment, that was more applicable to his Lordship, as a Bishop or Clergyman, than to any other Person.

And as to the second Letter from *Digby*, there was nothing in it that could affect his Lordship, because the Passage relating to his Health, and the Concerns of his Family, could not possibly be applied to him; for it says, he was then in a very ill State of Health, (*July* 25) and his Family in great Disorder: Whereas to his own (*Mr. Wynn's*) Knowledge, he was then perfectly well, and able to transact all the ordinary Business of his Diocese and Deanery, and had been so for above two Months.

And of neither of these Letters, from *Motfield* or *Digby*, was there any Pretence of Proof concerning the Hands in which they were written, or of his Lordship's Receiving or Answering them.

As to the Letter taken upon one of his Lordship's Servants in the *Tower*, on which the Coun-

fel had laid so much Stress, because there were no Professions of his Innocence in it ; he thought, if there had, they would not have been much regarded ; but Matters seemed to be at a very low Ebb, when such Trifles were rely'd on ; for here is a Letter supposed to be for some intimate Friend, to whom there was no Need of making such Professions ; they were before sufficiently perswaded of his Lordship's Innocency ; they knew it to be impossible he should be guilty of the Charge, and therefore there could be no Reason to enlarge upon that Head.

The fourth Charge against the Bishop may be reduced to the Coincidence of Circumstances, Times, and feign'd Names, in the intercepted Correspondence. The chief Observation about the Coincidence of Times and Circumstances, relates to the three Letters of the 20th of *April*, the Bishop's Illness, his Lady's Death, and the Present of the Dog.

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As to the Article of Times, his Lordship's Going and Coming, it appeared, that the Penmen of these Letters were sometimes right, but as often wrong ; and their Mistakes were of more Consequence to destroy what was inferr'd from them, than the Agreement, in Point of Time, could be to establish it : There was no Doubt but the Correspondents on this Side, whoever they were, either out of Malice or Vanity apprised themselves, as well as they could, of the Bishop's Motions, to give some Probability to what they said of him ; and yet it happen'd, that out of seven Instances occurring in these Letters, three or four were gross Mistakes, two of them doubtful, and only two of them true, in all Circumstances.

In one Letter, *May 7*, it is said, *Jones* (the Bishop) is come to Town only for a Day ; whereas the Bishop had then been in Town two Days, and staid three more.

In the Letter of *J. H.* to *Dixwell*, *June 12*, 'tis said, *Rig* (the Bishop) is in the Country ; whereas, it appears, he was then at *Westminster* : And in the Letter to *Maisonneuve*, *July 19*, he is said

said to be in the Country, when he was at *Westminster*; but he observed with some Regret, that none of these Mistakes were taken Notice of by the House of Commons: On the contrary, they conclude *that it agreed with the Inquiry made at that Time.*

As to the Names of *Jones, Illington, Weston* Page 423, and *Rig*, he shews, they could not belong to the Bishop; and besides other Arguments used by *Sir Constantine*, he observes, that the cant Name of *Rig* could never be applied to the Bishop, in the Letter from *Kelly* to *Gerrard* (*Sir J. D'Obryan*;) for here an Account having been given of the Difficulty *Kelly* was under to get Bail, it is added, *Your old Friend Rig indeed offer'd all that could be expected of the poor Man.* Now tho' his Lordship had no Concern in procuring Bail for *Kelly*, and the only Words applicable to him in this Passage, were those of *poor Man*; his Lordship was not so poor a Man, at that Time, as to be unable to have procured Bail, if he had endeavoured it; which was the Sense that Writer intended it in: Indeed, he had neglected those Opportunities of enriching himself, which others would have laid hold of; but was not ashamed of his Poverty on that Account, because free from all unjust Acquisitions, and unworthy Compliances.

He shews further, that *Jackson*, said to mean Page 424, the Pretender in the Letter of the 20th of *April*, could not stand for him; That in all the voluminous Correspondence that was supposed, neither *Kelly* or *Plunket* ever describe him by that Name; and *Plunket's* Cypher, from whence it was said to be taken, was not made when that Letter was writ; That these Words in it, *Our Circumstance on this Side*, discover'd it could never be writ to a Person in *Italy*; for through all the Papers this Expression was used in Contradistinction to *France*, which is called the other Side, and not *Italy*.

As to what the Counsel on the other Side had urged, That when their Lordships proceed in a *Legislative Capacity*, they were not to be guided by the Rules and Niceties of Law; and therefore

they were not in this Case to expect an Evidence strictly legal, and that at this Time of Day, circumstantial Evidence was sufficient in a Charge of High Treason.

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To which he answer'd, That tho' he was far from thinking that their Lordships were circumscribed by the Forms of inferior Courts, because they were in their own Nature discretionary, and the Courts themselves often vary them ; yet the fundamental Maxims of Law, the unalterable Measures of Justice, and the positive Directions of Acts of Parliament, were of another Nature ; they were binding every where to all Persons and Authorities, as long as they continued Laws, the King himself not excepted : But if every one was to follow the Dictates of his own Judgment, what Confusion and Uncertainty would it produce in all Proceedings ; private Opinion would too often be a Pretence to exercise private Malice, Revenge and Ambition.

He appealed to all that heard him, whether they had not believed Things as strongly, as they did at first the Bishop to be guilty of what was suggested against them, and yet had afterwards found themselves mistaken. Nothing was more common than for Men, who agreed in the same Notions of Morality, to deduce different Conclusions and Applications from them ; and therefore it had been the Wisdom of the Laws of *England* to determine general Notions of Justice and Right, by particular Rules and Applications, in Order to settle that Variety and Inconstancy, which, without some established Rule, must necessarily follow.

He hop'd their Lordships would never let it be said, that they, who were the supreme Oyer of the Kingdom, whose Resolutions were Laws to other Courts, and ought to be an Example to all others, in the Justice of their Proceedings, would follow their own private Opinions, and convict this Reverend Prelate upon mere Hearsays, Conjectures and Suppositions. Who could read that melancholy Case, without Concern, in *Coke's 3d Inst.* of an
Uncle

Uncle that was condemned and executed for the supposed Death of his Niece, upon a Train of presumptuous and circumstantial Evidence; or *Harrison's Case*, within Memory; where the Father and Mother both suffer'd upon the Presumption of a suppress'd Murder. And with what Shame and Remorse did that hasty Judge see himself convicted by the Persons returning from beyond Sea; and every one remember'd the Charge of Treason against the Bishop's Predecessor; where, if such a Bill had been thought on, it might have passed before the Truth could have appeared: But happy was it for that innocent Prelate, that a contrary Method was taken; his Accusers brought Face to Face, by which their *Villany* was discover'd.

Here he cited the Lord Chief Justice *Holt*, Page 426. *Vaughan*, *Hale* and *Hobart*, to shew that the Rules of Law ought to be their Guide, in passing Acts of Parliament, as well as in the ordinary Course of Judicature; but rely'd chiefly on the present Lord Chancellor's Opinion, in a Case where the same Doctrine being advanced, (*viz.*) *That the Parliament was not bound to the Rules and Proceeding of other Courts*: Answer'd, That those Rules were not to be Patterns to them, because they were Rules of those Courts, *but because they were Reason, and Reason approved of by long Experience*; and for that Cause, the House ought to imitate them, as well as *Westminster-Hall*.

Besides it appear'd, that some former Parliaments had held themselves bound by the Common Rules and Proceedings of Law; or what was the Meaning of those several antient Acts of Reversal, *Because Judgments given in Parliament were not pronounced according to the known Laws*. There is an Act for the Attainder of the Earl of *March*, because he had been instrumental in procuring the Attainder of another Lord, under Pretence of a Letter, which *the Record expressly says, was no Evidence*. And the Record for reversing the Attainder of *Roger Mortimer*, 28 Ed. 3. Sir *Thomas Haxly*, &c. is expressly declared to be, *Be-*
cause

cause they were attainted contrary to the good Laws and Customs of the Realm. The Statute of 1 Ed. 6. is directly levelled at such Proceedings; and, that there might be no such for the Future, reduces all Treasons to the antient Standard of the 25 Ed. 3. and enacts, That no Person or Persons (*i. e.* no manner of Persons in no manner of Place, Court or Method) shall be convicted for any Offence of Treasons, Petit Treasons, Misprisions, for which the Offender shall suffer any Pains of Death, Imprisonment, Loss of Goods, or the like, unless accused by the Testimony of two lawful and sufficient Witnesses. And the Statute of 5 Ed. 6. *cap.* 11. goes farther, and enacts, That there shall not only be two Witnesses, but those two Witnesses shall be produced in Person, and before the Party's Face maintain and avow, what they have to say: The Words of both Statutes are general, without any Exception of Place or Proceeding.

And there having been several complaisant Laws afterwards introduced by the pretended Zeal of Ministers, with a peculiar View to the Prince on the Throne, the Statute of the 7 W. 3. *c.* 3. was made to ascertain Treasons, and regulate the Method of Trials: And though there be a Proviso in it, that it shall not extend to Impeachments or Proceedings in Parliament, as it does to inferior Courts; yet surely the Reason and Justice of that Act ought to be a Guide, as far as it was consistent with the Nature of their Lordships Proceedings: Inasmuch as it was the Sense of the whole Legislative, and the united Voice of the Nation at that Time, and founded on dear bought Experience; so far it might be worthy of their Imitation.

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He desir'd their Lordships would reflect how the Usage of Parliament was before that Statute, particularly the Lord *Delamere's* Case in King *James's* Reign, *Anno* 1685, where there was one positive Witness, and a strong circumstantial Evidence; and yet their Lordships Predecessor thought that not sufficient to find him guilty. In the Lord *Stamford's* Case the same Year, there was

was one Witness and strong Circumstances, and he was acquitted. And in the Case of the Earl of *Pembroke* for Blasphemy and Abuse of the Sacrament, *Anno* 1677, the single Testimony of a Commoner was held no sufficient Evidence against a Peer denying the Fact upon his Honour, and address'd the King thereupon, that he might be released from his Imprisonment.

Their Lordships also had thought fit to admit some of the Regulations of the last mentioned Act into their Proceedings: They allowed Counsel to the Prisoner in Treason, to speak to the Matter of Fact; They allowed him a Copy of his Charge, required the Witnesses to be upon Oath, and refused to admit Evidence of Facts not contained in the Charge; and there was as much Reason to require two Witnesses, as that Act required. If the Statutes of *Ed. 6.* were still Laws, it could not be just to take away a Man's Life or Liberty on less Evidence, than those Laws required, in any Place, or by any Method whatever.

The Civil Law, which in some Degree was receiv'd by all Nations, as a Scheme of the greatest Equity and Justice, requir'd two Witnesses, at least, free from all Exceptions, to make a full Proof: The Testimony of a single Witness was of no Validity, unless other Circumstances concurred. He own'd, that in the Inferior Courts, there were many Cases where two Witnesses were not required; but then the Trial was by a Jury of twelve Men of the Neighbourhood, who were supposed to know something of the Fact; but in a Case of Treason, two Witnesses were required there.

But if the Opinion of domestick or foreign Lawyers, their own uniform Usage, and the Reason of the Thing, would not prevail; and they were resolved in this one Instance, and follow their private Opinions; yet let every one hearken to that still Voice within him, with an honest Intention, with Temper and Moderation, not sway'd by Hopes, over-rul'd by Fears, or transported by Zeal, beyond the Bounds of Justice, and through this Reverend Prelate's Sides, give a Wound to

himself and Posterity, which could never be cur'd. Let their Lordships consider, if not for his, yet for their own Sakes, the Circumstances, the Probabilities and Evidence, on both Sides, with an unbiass'd Conscience, and by the Measures of Law and Justice ; for tho' some Proceedings may seem convenient to certain Times and Occasions, yet unless they agreed with Law, with Reason and Justice, no Man ought to think he had Power to consent.

There was a noble Instance on Record of the Lord *Digby*, and worthy Imitation : He had been one of the most violent Managers in the Impeachment of the Lord *Strafford* ; and yet when that Proceeding was waived, and a Bill of Attainder brought in, he spoke as violently against it : He said, when he gave his Consent to the Accusation, he was assur'd his Crimes would have been fully and legally proved ; which if they had, he could have condemn'd him with Innocency ; but as the Case then appeared, no Man could satisfy his Conscience in the Doing of it. 'Twas true, the Parliament had a Judicial and Legislative Capacity ; the Measure of the one ought to be legally just ; the other political and prudential ; but these two Capacities were not to be confounded in Judgment, they were not to piece up the Want of Legality, by Matters of Convenience, to the Ruin of a Man by a Law made *ex posteriori*.

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It must appear to their Lordships by this Time, that this Proceeding was contrary to the fundamental Laws of the Kingdom, contrary to publick Wisdom, and unjust in it self ; That the Suggestions, on which the Bill was founded, had not been proved with any Degree of Probability, which ought to satisfy the Conscience of an honest reasonable Man : But if the Matters laid before their Lordships had not all the Weight, he hop'd they had ; or if he had omitted any Thing material for this Reverend Prelate's Defence, he hop'd their Lordships, as Judges, and consequently Counsel for the Prisoner, would from their own Observation supply it : It was the Cause, the Fortune,
and

and the Liberty of a most Reverend and Learned Prelate, who was to be stripp'd of all those Dignities and Preferments which his own high Merits justly call'd him to, and which he had ever since adorn'd with the greatest Lustre, upon the slenderest Grounds, and he had almost said without Precedent. There had been Instances indeed of Deprivation in the Reign of Queen *Elizabeth*, and since the Revolution; but they were upon a general Law then in Being, and an Incapacity voluntarily incurred by those Prelates, by refusing to give that Security to the Government, which at those Times was absolutely necessary; and their Example might have produc'd worse Consequences than it did; however, their Punishment went no farther; but this was a particular Law, to be enacted for this particular Prelate, subsequent to the suppos'd Offence; and which went much farther than the other; not to deprive him of his Life indeed, but of all the Conveniences and Comforts of it; he was to be doom'd to the Case of *Cain*, and turn'd out of his native Country, full of Age and Infirmities, to dwell among Strangers, and even beyond the Reach of his Majesty's Goodness.

But if their Lordships did pass the Bill, he would still have the Peace of his own Mind, and this comfortable Reflection, That he shar'd the Fate of the greatest and honestest Statesman of the last Century; and he hop'd their Lordships would consider what the Bishop had already suffer'd, the Length and Closeness of his Imprisonment, which had been attended with such unheard of Barbarities and distinguishing Severities, as were a Shame and Reproach to a civiliz'd Nation: The Case of *Colledge* was thought hard, who had his Papers taken from him; but that was before Counsel and Solicitors were allowed to assist the Prisoner; but though they were now allowed by Law, and were actually assign'd to the Bishop, yet Part of his Defence and Part of his Evidence was torn and taken from him; and his Lordship would be a great Sufferer, though they should reject the Bill.

Their

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Their Lordships would consider also the Infirmities of Body, under which that Great and Noble Mind even now labours, which render'd him almost incapable of attending his Defence. The Grief it must be to appear as a Criminal in that House where he had so long sat as Judge, and under the Suspicion of so heavy a Charge; how afflicting it must be to one of his Character and Function, to be tax'd with Breaches of his Duty to God and Man; of Scandal to Religion, and Designs of over-throwing the Church and State, and yet happens to be the only Clergyman in *England* that ever thought it worth his while to write in Defence of *Martin Luther*, the great Instrument of our Reformation, and who has upon all Occasions appear'd the most strenuous Assertor of it.

If this Bill should pass into a Law upon so slight an Evidence; he begg'd Leave to say, that whatever the present Age might think, his Case would be a standing Mark of Reproach to it; and he would be the Wonder and Pity of all succeeding Generations; and concluded with begging their Lordships would pardon any Warmth of Temper, or unguarded Expression he might have been guilty of, in a Case that every *Englishman* naturally consider'd as his Own, and therefore would in some Measure warm the most even Temper.

Then the Evidence on Behalf of the Bishop was produc'd; but the Editors of the Folio Edition, either could not come at it, or for some prudential Reasons thought fit to omit the Publishing of it, and proceed to give us the Speeches and Observations made by the Bishop's Counsel on the Whole.

Sir Con Phipps's
Observations
on the Bishop's
Evidence.

Sir Constantine Phipps said, He hop'd they had fully answer'd every Part of the Charge in the Bill; they had totally destroy'd the Credit of *Neynoe's* hearsay Evidence; it was so full of Inconsistences and Contradictions, that no Person could give the least Credit to what he said, without offering the greatest Violence to his Reason.

It was wonderful the Counsel for the Bill should insist on his being credited, after he had declared, that a Right Honourable Person *endeavoured to persuade him to accuse Persons of Quality of Things he knew nothing of*: That the same Person told him in private, *what Questions would be ask'd him, and what Answers he should make*; particularly, that he gave him five Questions, and told him what he should reply to each of them; That upon his Refusing to give Evidence, he was threatned with *Newgate*; which induc'd him to give in his Informations against the Bishop, and others; and had the Impudence to say, the same Right Honourable Person offer'd him 2000*l.* and 500*l. per Annum*, and a Place, to accuse the Protesting Lords, the Earl of *Orrery*, and this Reverend Prelate: And when he was ask'd, Whether he knew any Thing of the Plot, swore, No, nor any Body else; but that he knew of two other Plots; one of Mr. *Walpole* against the Protesting Lords; the other of himself upon Mr. *Walpole*, to get 2000*l.* of him; nay, it was prov'd, That he declar'd, That Mr. *Walpole* pressing him hard to accuse some Persons, he had it once in his Mind to take up *Walpole's* Sword, and run him thro' with it, and so make an End of the Plot: And he believ'd, after all this, the Counsel for the Bill must agree, no Credit ought to be given to one Word he had said; and then the greatest Part of the Charge against the Bishop would come to nothing.

The Evidence of Mr. *Lewis* was very material in this Case; for he had shewn that *Brocket* of the Post-Office, was so skilful in counterfeiting Hands and Seals, that he wrote the Superscription of a Letter, and took the Impression of a Seal, and seal'd it again; and did so well, that Mr. *Lewis* could not distinguish it from the Original: The Engravers also affirm'd, they could take off the Impressions of Seals, that they could not be distinguish'd, tho' the Wax was broken; and the Engravers themselves appear'd mistaken in some Impressions that were produc'd: It was observable, that the Seal in Question was a *Cicero's* Head, a
very

very common Seal; so that nothing could be fix'd on his Lordship on Account of that Seal; and as to the Dog, Mr. *Birmingham* had sworn, and Mr. *Kelly* solemnly affirm'd, it was for Mrs. *Barnes*, and not for the Bishop.

As to the three Letters of the 20th of *April*, It had been prov'd the Bishop could not write or dictate them to *Kelly*; and the Servants, tho' under Confinement, and not permitted to see any one, agreed in their Evidence: *Gordon* had made an Affidavit he never receiv'd such a Packet, and *James Talbot*, to whom it was said to be delivered, was then in *London*.

Thus a Bill of a most extraordinary Nature was supported by as extraordinary Evidence; and they hop'd they had set the dark Passages, of which the Charge was compounded, in such a Light, That it appear'd the Right Reverend Prelate was not guilty of any of the Offences contain'd in the Bill.

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Mr. *Wynne's*
Observations
on the Bishop's
Evidence.

Mr. *Wynne* observ'd, That the Witnesses had fully answer'd all he had open'd, and in many Things exceeded his Instructions. Their Lordships had heard the Terrors and Apprehensions *Neynoe* was under, because, as he himself express'd it, he had given false Information against the Bishop, and so many other innocent Persons; they had observ'd the Inducements he had to give those Informations, and how often he had declar'd his Intentions to escape, in order to avoid the Punishment, which he apprehended justly due to him, because he could not make out the Truth of them.

Three Witnesses, two of which were unknown to the Bishop, and still in close Custody, so that it was impossible to practice upon them, had declar'd these Particulars to many People before *Neynoe* drown'd himself, and still persisted to aver them upon their Oaths; and Mr. *Skeene* being examin'd concerning the Discourse between him and *Pancier*, as to *Pancier's* printed Deposition in the Report, *App. D. 1.* denied upon his Oath every Word of it: He said indeed, Captain *Pancier*

tier endeavoured, by Treats and Entertainments, to induce him to support his Informations; but that he never gave him, or could give him Grounds to say any such Thing of him.

As to the three Letters said to be dictated to *Kelly* by his Lordship, the 20th of *April*, six or seven of his Servants had depos'd, that no Stranger approach'd his Room for several Days before and after; and one of these Servants, who happen'd to be a Prisoner with his Lordship in the *Tower*, being ask'd, Whether the Bishop had not remind-ed him of those Circumstances of his Lady's Sick-ness, and his own Want of Health, depos'd, That it was entirely his own Recollection, by casually Taking up the Report after the Bishop was gone to bed, and dipping on that Part of it in which his Lordship is charg'd with having writ those three Letters. Upon which, the next Day, talk-ing to his Fellow-Servants, and they agreeing to the very Circumstances, they acquainted the Bi-shop with what they had read, and how they could, from their own Knowledge and Remem-brance, disprove every Circumstance; That four or five of these Servants were still in Custody of se-parate Messengers, without any Opportunity to converse together; and yet every one of them had been perfectly consistent with themselves, and one with the other, and all equally positive.

As to the other Proof of his Lordship's Writing these Letters, from the Subscription of the Num-ber 1378, which Mr. *Willes*, the Decypherer said, stood for the Name or Title of a Person, begin-ning with the Letter *R*; the little Time they had to enquire into this Assertion, and their Lord-ships not permitting some Questions put to the Decypherer to be answer'd, they were not en-abled flatly to disprove it; but it seem'd impossi-ble to affirm even thus much, with any Degree of Certainty; and it appear'd manifestly to their Lordships, by several Passages in the Correspon-dence, not yet decypher'd, That either the Art was not so infallible, or that Mr. *Willes* was not so great an Artist as he pretended to be.

And

And admitting this Number really denotes a Person's Name or Title beginning with an R; what a strange uncertain Proof was that, to fix a Charge of High Treason upon the Bishop, when so many other People's Names and Titles began with the same Letter; and this admitted as Evidence, not in a minute Circumstance, but in the very Gift of the suppos'd Offence in the Principal Foundation of the Charge, in the only Letter that was Criminal, in order to magnify and improve the Rest into High Treason.

Another Way of proving these Letters to have been dictated by the Bishop, was, because another Letter, suppos'd to be an Answer to this, mention'd the Present of a Dog; but their Lordships remembred what Mrs. *Barnes* said, That Mr. *Kelly* sometimes told her of another Dog design'd for the Bishop, but always apprehended that Dog she had in her Possession, design'd for her, and kept it accordingly as her own; besides which, they had seen the solemn Attestation of Mr. *Birmingham*, the *French* Surgeon, That he was the Person that gave the Dog to Mr. *Kelly*, for Madam *Barnes*, of whom he had receiv'd Civilities in *London*, and for no other Person, nor for no other Intent; That he never receiv'd any Dog or Message from Lord *Marr*, as alledg'd in the Report, nor ever had the least Thought of the Bishop of *Rocheſter*, or his Lady, to whom he was utterly unknown, and consequently could not think of making them a Present: And Mr. *Birmingham's* Affidavit ought to have the more Credit, because his Majesty's Resident at *Paris*, Mr. *Crawford*, had been pleas'd to examine him about this Matter, being employ'd by him in his Profession, as a Surgeon; and he had confirm'd the same Account to him, which had been transmitted and read to their Lordships.

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As for the other Way of Proving the Bishop to be concern'd in these Letters from the Hand-writing, suppos'd to have been *Kelly's*; he thought this still destitute of Proof, from the Reasons he had formerly assign'd; and because they had
shewn

shewn by three positive Witnesses, well acquainted with Mr. *Kelly's* Hand-writing, That the only original Letter stopp'd at the Post-Office, as a Sample to the Rest, in Fact, was not his Hand, nor like it: And these Witnesses, as a Demonstration of what they said, shew'd their Lordships, among a Variety of Papers produc'd to them, That they could at once distinguish which was *Kelly's* Hand, which was any Thing like it, and which was not.

They had also produc'd the solemn Attestation of *Alexander Gordon* the Son, Banker at *Bologn*, upon Oath, That no such Packet of Letters ever came to his Hands, and consequently he could not deliver them to such a Person as *Talbot*: And *Gordon* deposes further, That he never had any Business or Intercourse with *Kelly* in his Life; and they had prov'd by unexceptionable Witnesses, That *Talbot* was in *London* at the very Time that Packet was suppos'd to be deliver'd him at *Boulogn*: They had shewn by two Witnesses, that Mr. *Kelly* was in *London* the 20th of *April*, and the Bishop then very ill at *Bromley* in *Kent*, and consequently could not then dictate those Letters to *Kelly*; and there had not appear'd the least Shadow of Evidence, That Mr. *Kelly* ever was employ'd by the Bishop in carrying on any Correspondence, or for Writing one Letter for the Bishop, upon that or any other Occasion whatsoever: And as to the Business of the Seal on the Letter directed to *Dubois*, it had been spoke to sufficiently already.

The next general Charge against the Bishop, was Page 433.
the receiving two Letters from abroad in Relation to this Conspiracy; but the Counsel for the Bill seem'd to waive the Letter sign'd *Digby*, address'd to *Weston*, and did not now pretend to prove any Thing concerning the Bishop, under the Name of *Weston*; nor had they yet prov'd the other Letter from *Motfield* to *Illington*, ever came to his Lordship's Hands, or in whose Hand-writing it was; tho', if it was Lord *Marr's*, as was suppos'd, many of their Lordships must have been well acquainted with it; nor had it been pretended that
the

the Bishop return'd any Answer to it; and as they had fully prov'd the Letters of the 20th of *April*, to which this is suppos'd to have been an Answer, a mere Fiction; the pretended Answer to it must likewise fall to the Ground as Part of the same Contrivance.

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There was one Thing yet remain'd to speak to, and that was the pretended Intimacy between the Bishop and Mr. *Kelly*: But what was there appear'd like it, even from their own Evidence? A Chairman said he carried Mr. *Kelly* to the Deanery three or four Times, about four Years ago, but the Bishop was not once at home; a Porter said he carried two Letters from Mr. *Kelly* to the Bishop; one of them last *Christmas* was Twelve-month, and the other some Time before that, but receiv'd no Answer, only his Service to Mr. *Kelly*; but what appear'd very unlikely in this Man's Evidence was, That dirty as this Porter must be in the midst of Winter, he deliver'd his Message to the Bishop in his Bed-chamber; and *Malone*, who usually attended on Mr. *Kelly*, being asked concerning Mr. *Kelly*'s Acquaintance with the Bishop, and if he had not been employ'd on Errands to and from the Deanery, said, He never was at the Deanery in his Life-time, and did not know where it stood.

Mrs. *Kilbourn*, with whom Mr. *Kelly* lodg'd some Time, said, she remembred a Message once came to Mr. *Kelly* from the Bishop, but denies the Bishop's Coach ever came for him to her House, as the Committee affirm'd in their Report. Mrs. *Barnes* was equally positive as to this Point, and believ'd there could not be any Friendship or Intercourse between the Bishop and Mr. *Kelly*, without her knowing it: Thus this suppos'd Intimacy and Acquaintance stood upon their Evidence; but the Bishop had shewn the contrary by no less than ten Witnesses, his Servants, some or other of them always with him, and every one of them had liv'd with his Lordship above two Years, who depose, as it were with one Voice, That they do not remember any such Person or
Name

Name as *Kelly* or *Johnson* coming to the House; as they must have remembred, if he had been frequent in his Visits or Messages; some of them said, they usually wrote down the Names of those that did come; the Coachman in particular, who had liv'd some Years with the Bishop, and appear'd now as an Evidence against him; yet was positive, That he never saw Mr. *Kelly* or Mr. *Johnson* at his Master's House; and being carried to the *Tower* by a Messenger, to see if he could recollect his Face, freely own'd he had never seen his Face before; and that he should have seen him, or heard of him, if he had frequented his Master's House.

They had likewise shewn by Mr. *Pope*, who had been a constant Companion of his Lordship for three Years past, and saw him two or three Days in every Week, almost for some Hours, That his Lordship generally sat in his Bed-chamber: That he was admitted to him at all Hours, and in all Companies, and that his Lordship never discover'd any Thoughts or Intentions like those now charg'd upon him, but had heard many Things drop from him of a Tendency directly contrary.

They were ready also to have laid before the House several laborious and intricate Searches and Controversies in Matters of Literature with different Persons, which the Bishop was engaged in last Summer; which would have been a full Employment for some Men's whole Lives; but it was not thought necessary, because, as he suppos'd, they were fully satisfied of his Innocency by the Proof they had made; and he hop'd there did not now remain the least Suspicion of the Charge brought against the Bishop; That there was not the least Degree of Probability, or the very lowest Sort of Presumption that was known in Law; and therefore pray'd that their Lordships would reject the Bill.

The Bishop said, he had been under a very long and close Confinement, and treated with such Severity and Indignity, as he believ'd no Prisoner

The Bishop's
Speech in his
own Defence.

Proceedings against Bishop Atterbury, &c.

of his Age, Function and Rank ever was; whereby that Strength and Use he had of his Limbs, when he was committed in *August* last, was so far declin'd, that he was very unfit to make his Defence to a Bill of that extraordinary Nature.

The great Weakness of Body and Mind he labour'd under; the Usage, Hardships and Insults he had undergone might have broken a more resolute Spirit, and much stronger Constitution.

Their Lordships had permitted him to appear before the House of Commons, least his Silence there should be turn'd to his Disadvantage, as in Fact it was, by the Counsel for the Bill; but the Reason he did not, was the Resolution of the Commons of the 11th of *March*, *That it appear'd to that House, That Francis Lord Bishop of Rochester was principally concern'd in forming, directing, and carrying on a detestable Conspiracy, &c.* Upon weighing whereof, and the Copy of the Bill, he found nothing charg'd in the Bill, but what was previously resolv'd in this Vote; and therefore whatever he had offer'd in that House, must have been an express Contradiction to it; and what Hopes he could have of Success in such an Attempt, he need not say. The Bill to inflict Pains and Penalties (as the Resolution had been) was sent up to their Lordships without any Oath, or any criminal Act prov'd against him by any living Witness: And was a Man thus sentenc'd below, to be depriv'd of all his Preferments, and his very Function; to be a perpetual Exile, and render'd incapable of any Office or Employment; to be prohibited all Correspondence by Letters or Messages; and One who was a Bishop of the Church of *England*, and a Lord of Parliament.

It was the first Instance, where a Member of that House had been so treated and prejudg'd; and he pray'd God it might be the last, and that such Precedents in this Kingdom might not be multiplied.

His Counsel had amply done their Parts in arguing the Points of Law, explaining and enforcing the Evidence, and shewing the little Appearance
and

and Shadow of Proofs that had been offer'd against him; but it became him to say something for himself, least his Silence should be construed Consciousness of Guilt, or at least an Unwillingness to enter into Matters of so dark and perplex'd, so nice and tender a Nature; as if he was not able to clear and explain himself, and rather chose to leave it to the Management of others; but he thank'd God he was under no such Restraining; he could speak to their Lordships on this Subject with great Freedom and Plainness.

But he beg'd Leave first to represent to their Lordships some particular Hardships under which he had labour'd — The first was, 'Reading Extracts of *Anonymous* Letters, without suffering any other Parts of the same Letters, though relating to the same Subject, to be read' — Another was, 'Excusing the Decyphers from answering Questions ask'd by him, and which he thought necessary for his Defence, lest they should reveal their Art.' — The next was, 'Not suffering him to be answer'd by the Clerks of the Post-Office, lest the Secrets of that Office should be discover'd.' Another was, 'Not suffering a Person, who had been at least ten Years out of the Secretary's Office, to answer any Questions which came to his Knowledge, by being some Years in that Office.'

Another was, 'Reading Examinations, neither dated, sign'd, nor sworn to.'

Another was, 'Reading Letters suppos'd to be Criminal, writ in another Man's Hand, and suppos'd to be dictated by him, without offering any Proof, that he either dictated them, or was privy to them.'

Another was, 'Not allowing him Copies of the decypher'd Letters, though petition'd for, till the Trial was so far advanc'd, and he so employ'd and weaken'd by it, that he had not sufficient Time to consider them.'

Another was, 'Not allowing him to read out of the Collection of Papers, before the House, any

Part

‘ Part of them, in order to discharge himself,
 ‘ but what hath been read by Clerks.’ —

And all this in a Proceeding where the Counsel for the Bill profess they have no legal Evidence, and that they are not to be confin’d to the Rules of any Court of Law or Equity; though as often as it was for their Service, they constantly sheltered themselves under it.

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The General Charge he observ’d in the Bill was, That he had been deeply concern’d in forming, directing, and carrying on a wicked and detestable Conspiracy, and was a principal Actor therein; which Charge was divided into two Heads: 1. His traiterously consulting and corresponding with divers Persons, to raise an Insurrection in this Kingdom, to procure foreign Forces to invade it, &c. 2. His traiterously corresponding with the same Intent, with Persons employ’d, &c. But neither Part of this Charge had been made good by the Counsel for the Bill; nor had they attempted to prove him at one Consultation, or any Thing that tended towards such a Proof, except the exploded Story of the *Burford* Club, and two or three hearsay Stories of the Lord *Strafford*, Lord *North*, Lord *Orrery*, and Sir *Harry Goring*, said to be concern’d in the Management of this Affair; but he had scarce ever met any of them, unless about General Matters depending in Parliament; and as to my Lord *North*, though he had a great Honour for him, he had never any Intimacy with him, especially since the Affair of the Dormitory, in which he appear’d so against him, that he had certainly lost the Cause, had not that Lord’s Affairs call’d him to *Holland*.

— He had not been once at Lord *Orrery*’s these two Years; and Sir *Harry Goring* he never saw till he saw him at *St. James’s*, and once at *Bromley*, on Occasion of his Placing four Sons at *Westminster-School*; the last Time he saw him was about twelve Months ago: My Lord *Strafford* had visited him, and he had din’d with him once at his House: Their Lordships would excuse

cuse him for being so particular, since it was with these, and these only he was charg'd with holding Consultations with, to forward the Conspiracy; but their Lordships would observe, there was not one Overt Act or Circumstance of Time or Place mentioned, prov'd or alledg'd. He had not therefore consulted or conspired at home.

The next and only material Part of the Charge was, Corresponding abroad with the Pretender, a heinous Accusation strongly asserted, much insisted on, but how maintain'd? (*Here he gave a Summary of the Evidence, which his Counsel had given at large before*).

If it was demanded who then wrote those Letters imputed to him, and with what View were they writ? The Answer was obvious; his being there, at their Lordships Bar, sufficiently explain'd it; it was enough for him to prove he did not write or dictate them, and he had prov'd it abundantly: Eight or nine such Witnesses as he had produc'd, would have born down the Evidence of one or two, if they had been upon Oath; but here being none on the one Side, and all on the other, who gave a direct positive Proof; could their Lordships deliberate a Moment for the Reason of giving their Judgment; and if this were so, there was an End of the whole Matter; for all other Insinuations, feigned Names, and obscure Passages in Letters depending upon this, must fall together.

There was still a fifth Letter, which he acknowledged to be his Hand, that was taken upon his Servant; Mr. Reeves had made some uncharitable Observations on it, which might be allow'd in the Courts of Law for ought he knew; but he was sure, in a Court of Equity, the most favourable Construction ought to take Place; he observes, that the Bishop doth not, in his Letter insist on his Innocence in general, but considers only what Evidence did affect him; but it came out at length for whom that Letter was design'd, (his Solicitor) which he thought a sufficient Answer to Mr. Reeves's first Observation. — He

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observes next, 'That tho' the Bishop clears himself from the Knowledge of *Laver*, *Neynoe*, &c. he says nothing of *Kelly*; but the Gentleman the Letter was design'd for, knew it was in Answer to one wrote to him about *Laver*, and was ready to make Oath of it, if there was Occasion——

The third Observation he made was on these Words of the Letter, *If I cannot ward off the Blow, I must be a Prisoner some Years without Remedy*; from whence he infers the Bishop's Meaning must be, That he was conscious of Guilt.

But he apprehended an Impeachment would have been lodg'd, and never prosecuted, as in the Cases of the Lords *Danby* and *Oxford*, and then he should have lain without Trial and without Bread.

That Mr. *Kelly* was no Stranger to him, he own'd; but he denied he was in any Degree intimate with him, or frequently saw him; he denied such a slight Acquaintance as he had with him, could be any Temptation to enter into Secrets with him of such dangerous Consequence as these were; however, Suspicion was not now the Business; they that prove some Things may be allow'd to suppose more; but they that prove nothing, have no Right to indulge their Suspicions and Conjectures to the Ruin of any Man; twenty Probabilities, allow'd to be such, were not equal to any one Matter of Fact well attested; it might strengthen a Fact, but could not support it. They could not be Evidence themselves, because one Probability might be set against another.——

The Counsel for the Bill had made a Distinction between Evidence in Law and reasonable Evidence; though he own'd he always thought the publick Law of the State the publick Reason of the State; and whatever it was in other Countries, yet in this Country no Evidence could be reasonable that was not legal: But here, what Sort of Evidence, either in Reason or Law, was brought against him; how was he prov'd to consult or correspond, to raise an Insurrection against his

his Majesty, or to procure a foreign Force to invade his Kingdoms, in Favour of the Pretender?

How, in the second Place, was he prov'd to have corresponded with the Pretender, or Persons employ'd by him? Was one Article of these Charges made out with any Colour of Reason? Suppositions without Proof: Suppositions dif- Page 439.
prov'd, and shewn to be vain and unjust.

He desir'd their Lordships would observe, first, The Inconsistency of some Part of the Charge; and, 2. The Improbability of it: The Report took Notice of three several Periods of Time, when (by some Informations from the Regent) the Design did not take Place: The first was during the Elections; the second, upon the King's going to *Hannover*; and the Third, the Breaking up of the Camp. Now there was not the least Hint as to the last of these three Designs in any of the Papers; though in the Recital of the Bill it is made a third Part of the Plot, and the most detestable Part of the Design; the laying violent Hands on his Majesty, and his Royal Highness.

There was not any Colour of Proof as to the first Part of the Conspiracy, which was to take Place at the Election; the only Reason pretended for that, was from a Passage where it was said, That the present Opportunity was elaps'd; That was the Opportunity of the Election; the whole Passage runs thus in the intercepted Letter, *Notwithstanding the Opportunity is elaps'd; I agree with you another may offer before the End of the Year, though not perhaps every Way so favourable:* The Committee suppos'd this Letter to be from *Kelly* to the Pretender, and dictated by the Bishop; and they suppose the Words to refer to the Time of the Election, and from these Suppositions infer, that he knew something of it; but if this Letter was from him to the Pretender, it must be an Answer to some Letter sent from them to him, by Repeating the Expression; and their Opinion in the Letter must have been founded on Intelligence before receiv'd; which Intelligence, considering the Distance between *London* and

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Rome, must have been communicated two Months, if not longer, before the Date of this Letter; and if we go back two Months, and talk of the Election being elaps'd, it was not begun; consequently that Opportunity in the Letter could not possibly mean the Time of the Election; and if so, it was impossible to be a Letter to the Pretender, that could consist with the Charge of the Persons writing in *April 1720*.

He next consider'd the Improbability of the Charge brought against him; was it probable (he urg'd) if he had been engaged in any such Design, there should be no Footsteps of his Corresponding with the Duke of *Ormond*, to whom, of all Persons abroad, he was best known, and to whom he had the greatest Regard; but should chuse rather to engage in such a Design with Mr. *Dillon*, a military Man he never saw, and with the Earl of *Marr*, whom he never convers'd with, except when he was Secretary of State; and that at a Time when he and all the World knew he had left the Pretender's Service several Years, and had a Pension from his Majesty; was this a Season to enter into Conferences with him about Restoring the Pretender; and this by Letters by the common Post; how did this consist with the Caution and Secrecy that was said to belong to the Bishop; and was it probable, when he was attending the Bed of a sick Wife, and expecting her Death, not daily, but hourly, that he should enter into Negotiations of that Kind? There was no Occasion to dispatch any of those three Letters to excuse his not Writing; the Circumstances of his Family had been a sufficient Apology.

Was it probable, when he was carrying on public Buildings of various Kinds at *Westminster* and *Bromley*, consulting all the Books from the *Westminster* Foundation, engaged in a Correspondence with Learned Men about settling an important Point of Divinity; That then he should be carrying on a Conspiracy? Those that entertain'd such Thoughts without Reason, might condemn him without Argument.

Was

Was it probable he should meet and consult, in order to carry on this Conspiracy, with no Body, and no where; That he who always liv'd at home, and never stirr'd out of his Chamber, but to dinner; receiv'd all Persons that visited him, and was deny'd to none, should have an Opportunity of being so engaged; and if he was, that none of his Domesticks should observe any Appearance of any such Thing; no Evidence should appear among his Papers, though they were all seiz'd at both Houses; himself also search'd in the *Tower*, and all his Servants, except one, imprison'd ten or eleven Weeks, and yet nothing of Consequence appear, or any one living Witness that charg'd him with any Thing material?

Was it probable that he should Form or direct a Conspiracy, that was not us'd to Arms; had he in any Instance of his Life, meddled remarkably out of his Sphere, in Affairs foreign to his Business and Character?

Here was a Plot of a Year or Two standing, to subvert the Government with an armed Force, an Invasion from abroad, an Insurrection at home; just when ripe for Execution, it is discover'd, and twelve Months after the Contrivance of this Scheme, no Consultation appears, no Men corresponding together, no Provision of Money, Arms, or Officers.----- Not a Man in Arms.----- And yet the poor Bishop has done all this. Page 441.

Laver and *Plunket* carry on a treasonable Correspondence; they go to *Rome* and receive Directions from the Pretender himself to promote his Cause.----- It does no where appear, that the Bishop has the least Share in, or is any Way privy to their Practices.----- And yet the Bishop has done all; he is *Principally concern'd in forming, directing, and carrying on this detestable Conspiracy.*

What was it could tempt him to step thus out of his Way, Was it Ambition, and a Desire of climbing to a higher Station in the Church? There was not a Man in Office farther remov'd from this than he was.

Was

Was Money his Aim? He had always despised it: Too much perhaps, considering the Occasion he was like to have for it; for out of a poor Bishoprick of 500 *l. per Annum*, he had laid out 2000 *l.* towards the Repairs of the Church and Episcopal Palace, without taking a Shilling for Dilapidations: Nor did he repent these Expences, (though since his long Confinement he had not receiv'd any of the Income of his Deanery) not doubting but God, who had liberally provided for him hitherto, would still do it; on whose good Providence he securely relied.

Was he influenced by any Dislike to the Established Religion, and inclined to a Church of greater Pomp and Power? No, he had ever opposed Popery, since he knew what it was. He began his Study in Divinity, when the Popish Controversy grew hot about that Immortal Book of *Tillotson's*; wherein he undertook the Defence of the Protestant Cause, and as such he esteem'd him above all.

They would pardon him, if he mentioned his writing in Defence of *Luther* thirty Years ago, and his having preached and wrote to that Purpose from his Infancy: And he was still ready to burn at the Stake, rather than depart from any material Point of the Protestant Religion, as professed in the Church of *England*.

Could he be supposed to favour Arbitrary Power? The whole Tenor of his Life had been otherwise, always a Friend to the Liberty of the Subject, and to the best of his Power, always maintained it.

But to return to the Improbability of the Charge; if he could be guilty of it, he must have acted under a Spirit of Infatuation; yet he had never been thought an Ideot, or a Madman.

And what was particular in his Case was, That he was render'd incapable of using or exercising any Office, Function, Authority, or Power Ecclesiastical, not only in his Majesty's Dominions, but any where else: Very hard! That such Spiritual Power, as was not deriv'd from Men but God himself,

himself, should be taken from him; and he was render'd utterly incapable of any Pardon from his Majesty, or his Successors.

They would strip him of his Substance, and send him where he could not subsist; send him among Strangers, and then hinder others from performing Offices of Humanity to him, and would give him less Time to order his Affairs and depart the Kingdom, than the Bill had taken in passing the Houses.

The Lord *Clarendon* carried a great Fortune abroad with him, was Master of the Languages, and well acquainted with the People he went to; but the Reverse of all this was his Case: He was like him in nothing but his Innocency and his Punishment.

It had been frequently observ'd, That the higher the Crime, the fuller the Proofs ought to be; but here was a Charge of High Treason brought against him, without any Evidence at all; for what was not Evidence at Law, could never be made so by any Power on Earth: The Law that required the Evidence, was as much the Law of the Land, as that which declared the Crime. Here was no Proof of any Thing writ or receiv'd by him, or even of one criminal Word spoken by him. Nothing had been produced against him, but the Hearsay of an Hearsay, the Party dead, and who had denied what he had said; or else strange and obscure Passages, and fictitious Names in Letters, the Conjectures of Decyphers, without an Opportunity given of examining and looking into the Decyphering, the Depositions of *Post-Office* Clerks about the Similitude of Hands, their Depositions made at distant Times, and without comparing any one of the Originals.

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Should he be deprived of all that was dear to him upon such Evidence as this, as could not be admitted in any other Cause or Court, and would hardly affect a *Jew* in the Inquisition of *Spain*, especially in the Circumstances he was in, scarce able to bear up under them?

Should

Should such an Evidence be received against a Bishop of this Church, and a Member of this House, God forbid? The Text said, *Against an Elder receive not an Accusation but before two or three Witnesses.* He was something more than an Elder; and should an Accusation against him be countenanced without any one Instance of Proof to support it?

Should he be the first Bishop in this Church condemned upon a Conjecture of fictitious Names and obscure Passages in Letters, instead of two or three Witnesses? Would not others endeavour to make Advantage of this Precedent, and was this good Divinity or good Policy?

As to the Justice of the Legislature, in some Respects, it had a greater Power than the Sovereign Legislator of the Universe; for he could do nothing unjust; and though there were no Limits to be set to a Parliament, yet they were generally thought to restrain themselves, and guide their Proceedings in Criminal Cases, according to the known Law.

The Parliament might order a Criminal to be tortur'd; but they never did, nor he hop'd never would; because Torture was never known in *England*.

But was it not Torturing to inflict Pains and Penalties on Persons only suspected of Guilt? Was it not much like it? The Parliament might, if they pleased, on Bills of perpetual Exile, as well as on Bills of perpetual Imprisonment, reserve to the Crown a Power to determine the one, as well as the other: The Law knew no such Thing as absolute perpetual Imprisonments.

The Parliament might condemn a Man on a Charge of accumulative constructive Treasons, as they did my Lord *Strafford*, and that by accumulated and constructive Proof of such Treason: But was such Proof ever admitted by any one to deprive his Fellow Subject of his Fortune, Estate, Friends and Country, and send him in his old Age, without Language or Hope; without Employment,

ployment, to get the Necessaries of Life, to starve? God forbid!

His Ruin was not of that Moment to any Number of Men, to make it worth their while to violate their Constitution; but where once such extraordinary Steps were taken, and they departed from the fixed Rules and Forms of Justice, and try'd untrodden Paths, no Man knew where they would stop.

Though he was worthy of no Regard, and whatever was done to him, might for that Reason be look'd upon to be just; yet their Lordships would have some Regard to their own lasting Interest, and that of Posterity-----This Proceeding carried on under a Pretence of supporting the Constitution, would at last effectually destroy it.

For his Part, he would willingly go into perpetual Banishment, and please himself that he was in some Measure the Occasion of putting a Stop to such Precedents, and should live wherever he was, praying for the Prosperity of his Country; and did in the Words of Father *Paul* to the State of *Venice*, say, *Esto perpetuo*; it was not his Departing from it he was concerned for, so his Country might be fixed upon the immovable Foundation of Law and Justice, and stand for ever.

He next proceeded to protest and declare his Innocence in the most deliberate, serious and solemn Manner, appealing to God the Searcher of Hearts, for the Truth of what he said-----

He was, he observ'd, charged in the Report with directing a Correspondence to Mr. *Kelly*; but he solemnly denied he ever directly or indirectly saw a single Line of any of their Letters, till he met with them in Print; nor were the Contents of any of them communicated to him. He, in the next Place, denied he was privy to any Memorial to be delivered to the Regent, or was ever acquainted with any Attempt to be made at the King's going to *Hanover*, or at the Election; or heard the least Rumour of a Plot, to take Place after the Breaking out of the Camp, till some Time after *Layer's* Commitment. And he did with the same Solemnity

nity declare, that he never collected, remitted, received, or asked any Money of any Man, to facilitate those Designs; or was ever acquainted with, or had any Remittances whatsoever, from any of those Persons; That he never drew any Declaration, Minutes or Paper, in the Name of the Pretender, as was expressly charged upon him; or ever knew of any Commission issued, Preparation of Arms, Officers or Soldiers; or the Methods taken to procure any, in Order to raise an Insurrection. All this he declared to be true, and would so declare to the last Gasps.

Had the Charge been as fully proved, as it was asserted, it had been in vain to make Protestations of his Innocence, tho' never so solemn: But as the Charge was only supported by the slightest Probabilities, they would allow the solemn Affeверations of a Man, in Behalf of his own Innocence, to have their due Weight.

But if by their Lordships Judgments, springing from unknown Motives, he should still be thought guilty: If for any Reasons or Necessity of State, of the Wisdom and Justice, of which he was no competent Judge, their Lordships should proceed to pass this Bill against him: *GOD'S WILL BE DONE; Naked came he out of his Mother's Womb, and naked should he return; and whether he gave or took away, Blessed be the Name of the Lord.*

Mr. Reeve replies.

Mr. Reeve, on the 13th of May 1723, replied to the Bishop's Defence; and having in the first Place given a summary Part of the Evidence contained in the Reports of the two Houses already recited, he proceeds to make his Remarks on the Evidence that had been given on Behalf of the Bishop.

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And first, as to the Witnesses produced against *Neynoe's* Credit, he said, That they agreed his Evidence was but Hearsay, as to the Bishop of *Rocheſter*; and if they had not other Matter, it would not be sufficient: If their Lordships were of Opinion it was false, there was Evidence enough against the Bishop of *Rocheſter* without it.

And as to the Persons they had produced to shew that *Neynoe* retracted the Evidence he had given, *Mr. Bingley*, *Mr. Steward*, and *Mr. Skeen*: *Bingley*, he observed, would have it believed that *Neynoe* told him he was employed by some Person in Power, to fix several Things upon several Persons, that they were innocent of, and had imposed upon a great Man he had made Application to, by telling him several Things that were false, and thereby got great Sums of Money out of him.

He did not know how far they design'd to carry this; for from what had been insisted on by the Bishop and his Counsel, they seem'd to be labouring to shew, that all the Letters relating to this Correspondence, were contrived between *Neynoe* and some other Persons, in Order to charge the Bishop of *Rocheſter* with being concerned in this Conspiracy.

But as to *Neynoe's* being concerned in writing those Letters of the 20th of *April*, or any subsequent Letters, in the Manner as was suggested, they should shew that all those Letters were intercepted, and in the Hands of the Government, before the Ministry knew there was such a Person as *Neynoe*; for *Neynoe* applied himself to that Honourable Person mentioned, subsequent to all this Correspondence, as a Person who could make Discoveries; so that this Insinuation must vanish, that these Letters were forged by *Neynoe*.

And as to the Character of *Mr. Bingley*, he had own'd at their Lordships Bar, that he had been whipt, pillor'd and imprison'd; and as he had taken his Degrees, consequently he had taken the Oaths.

Mr. Skeen carried his Evidence further than *Mr. Bingley*, and said, that *Neynoe*, even after his Examinations, own'd the Facts to be false; but *Mr. Skeen* was a Man attainted of High Treason, tried and condemned in *Surrey*, for the *Preston* Rebellion, tho' he was pardoned as to Life and Liberty, and consequently was of no Credit. And

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as to what *Stewart* said, relating to a Conversation with *Neynoe*, when they were in Custody, they should shew that they were never together after the first Night, and that there could be no such Conversation then.

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And whereas one of them had deposed, That while they were in Custody of the Messenger, a Paper was brought to him from *Neynoe*, by the Messenger's Maid, declaring he knew nothing of the Lord *Orrery's* being concern'd, and that what he had said of him, was utterly false; they should prove that the Maid never brought him any such Paper.

He did acknowledge that several noble Persons had been named as concerned in the Conspiracy; that there was no Reason to charge with it; but they might have used the Names of great Persons, to keep up the Spirit of their Party, by telling them such Persons were concerned; and if there was no other Evidence against those Lords, &c. they could not be affected by it.

It had been objected, That it was easy to get Information of such Circumstances, relating to the Bishop and his Family, as were mentioned in the intercepted Letters; and then to write such Letters, with a Design falsely to charge the Bishop with having been concerned in carrying on a treasonable Correspondence: That the Letters of the 20th of *April* had not been proved to be *Kelly's* Hand-writing, otherwise than by the Depositions of the Clerks of the *Post-Office*, who never compared one original Letter with another: But they apprehended their Evidence was much stronger than if they had only compared one Letter with another; for they had not only those Letters come every Week, but they were employed every Time these Letters came, to copy them; so that the Hand-writing of those Letters, must by their constant stopping them, and copying them, be so imprinted on their Memory, that they were better Judges of the Hand, than if they had only two of those Letters to have compared together, and

were so well acquainted with it, that they could distinguish it by the Superscription, and never were mistaken, as they had deposed.

And taking it for granted, that these Letters were of *Kelly's* Hand-writing, and his Correspondents in Answer to them; they must insinuate that *Kelly*, a vile Fellow, intending to charge the Bishop with being concern'd in this Conspiracy, had contrived Letters, containing Circumstances, in Order to ascertain the Bishop to be the Person denoted by the Names of *Jones* and *Illington*; and had by Combination receiv'd others Letters, in Answer to them, for this Purpose: These seem'd the Substance of their Defence. But their Lordships had no Reason from *Kelly's* Behaviour, at that Bar, to think he had any Malice against the Bishop of *Rocheſter*.

The Use they made of the Letter to *Dubois*, found among the Bishop's Papers, was to shew, That Mr. *Johnson*, or Mr. *Kelly*, was a Person employed by the Bishop, in writing Letters for him: For the Letter says, *I have heard nothing of you since the Letter I had about two Months ago by Mr. JOHNSON: To which immediately, in his Hand, returned my Answer.* If this was the Bishop's Letter, it plainly proved that *Johnson*, i. e. *Kelly*, writ for the Bishop. It was observable, that this Letter was writ in a Hand that no Man writes, a stiff Hand almost like Print, and was plainly writ to disguise the Hand of the Writer; but at the latter End of the Letter, when the Writer came to be tir'd, and off his Guard, they found several Letters, which, if compar'd with the Bishop's Writing, appear to be his Hand. The *D* in *December* was like the Bishop's, and the Letter *E* exactly agreed with his; but they had further Evidence of its being the Bishop's Hand, by being under the Bishop's Seal.

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Engravers had been called indeed to shew that Seals might be counterfeited, and Impressions taken off the Wax, and another Impression made, so as to make it difficult to know which was which. But this Letter had been in Custody of

the Committee of the House of Commons, ever since it was taken from the Bishop; and they must charge the Committee with taking it off and counterfeiting the Seal, if any Body; and who could believe this? It had been objected further, That the House of Commons had made no Observation of this Kind, with Relation to the Letter of *Dubois*, that it was the Bishop's Letter: Which was true, for they had not the Matter relating to the Identity of the Seals under their Consideration: This was a new Discovery. The Committee apprehended it to be a Letter directed to the Bishop, by the Name of *Dubois*, it being found among his Papers, and nothing to the contrary appearing till after they had made their Report.

But here is a Letter found in the Bishop's Custody, directed to *Dubois*, and mentioning the Hand of *Johnson*: And did the Bishop give any Account who *Dubois* was, who this *Johnson* was, or how the Letter came there, or had he said, that the Letter was not sealed with his Seal? No, his Lordship had not said one Word to this Purpose, or made any Denial of the Matter; but left it to their Lordships on that Foot.

Mr. *Christian*, who was acknowledged to be the top Engraver of *England*, had deposed, that he believed the Impression was made with the Bishop's Seal; and notwithstanding all the Art they had used to puzzle *Rollus*, the other Engraver, the Man was able, not only to distinguish how many Seals the Impressions were made with that were shewn him, but also to give an Account that they were cast Seals, and not grav'd Seals, that made those Impressions. Whether therefore any satisfactory Answer had been given to an Evidence so strong and convincing of *Johnson's* being employed in writting Letters for the Bishop, was submitted to their Lordships.

As to what had been offer'd to shew that the Dog was design'd for Mrs. *Barnes*, he desir'd their Lordships would remember the Evidence given by Mrs. *Barnes* herself, that *Kelly* told her, it
was

was for the Bishop of *Rochester*: And as to the Affidavit that in the Month of *March* a Dog was deliver'd to Mr. *Kelly* in *France* for Mrs. *Barnes*, that must be another Dog, and not this; for this was not deliver'd to Mr. *Kelly* in *France*, but sent over to him after he was in *England*, as appeared by the Letters: After *Kelly* had received it, he writes, That *he would inform Mr. Jones soon of it, to whom any Thing from that Quarter would be acceptable.*

As to what had been observ'd on Behalf of the Bishop, that the three Letters of the 20th of *April* could not be written or dictated by him, because he came to Town the 11th, and went to *Bromley* again the 12th of *April*; and that being laid up with the Gout afterwards, Nobody came near him, and consequently they could not be written on the Day assigned.

He answer'd, That they might possibly be written, or dictated by the Bishop, before the Day they bore Date, for they were written in Cyphers; and where a Person dictates a Letter to another, he does not reduce it into Cyphers, as it is dictated, but first writes it in Words at length, and then puts it into Cypher; and when it is proper to send such a Letter, then was the Time to date it; and if it be left with the Person that puts it into Cypher to send, as probably it was in this Case, it was left to him to date when he pleased; so that if they had shewn, that on the 20th of *April*, the Bishop was incapable of dictating it, it was no conclusive Answer to this Part of the Charge.

They would please to observe also, That upon the 11th and 12th of *April* both the Bishop and *Kelly* were in Town: *Kelly* came the 11th from *France*, and the Bishop the same Day from *Bromley*. There had no Account been given where the Bishop was those two Days; and it was possible from these Circumstances, that these Letters were written then.

But if it were not so, it appeared that *Kelly* did not lie at Home on the 13th, and that he came Home, and went to his old Lodgings at Mrs. *Kilbourne's* on the 14th: Those two Nights it did not appear where he was; he might be at *Bromley*, it was but an Hour's Ride; and though the Servants say they should have remember'd his setting up his Horse, if he had, he might set him up at an Inn, and go privately to the Bishop's.

And though it might have appeared that the Bishop was so ill at *Bromley* that he could not help himself, he was not very bad till he had been in the Country two or three Days; and these Letters might be dictated in those two or three Days.

One Witness had deposed, He was almost certain that no Stranger was with the Bishop; but he allowed the Minister or the Apothecary might be with him, and he not see them; and it was as possible Mr. *Kelly* might be there, and he not see him.

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They had brought all the Servants of the House, the very stable Boy, to prove that the Bishop could not see any Body without their Knowledge; even the Nurse that attended his dying Lady, and her Servants, deposed thus much, and were as positive as to any Body's coming to the Bishop, as the Servants that immediately attended him.

Q But they had Evidence that would entirely destroy this Account of his Lordship's being so ill, that he could not move Hand or Foot, or was disabled to dictate those Letters: They should shew, that he did actually send a Letter by *Grant*, his Butler, to a Person in Town, on the 21st of *April*. (This seems to be the Letter that a Prelate pretended to have received from him; which Evidence he was obliged to retract before the House of Lords).

They had brought Witnesses to prove that the Letters were not *Kelly's* Hand-writing: The Witnesses, on one Side, believed they were, and the Witnesses on the other, believed that they were
not

not. But there were those Circumstances relating to the Hand-writing of Mr. *Kelly*, that put it beyond all Dispute that it was his Hand; and that was the Answers he had received to those Letters. They had trac'd him from Place to Place, where the Letters, that came in Answer to his Letters, were directed: To Mr. *Andrews* at the *Dog and Duck*, where *Kelly* employed a Person to take them up, and they were delivered him. And at *Burton's* Coffee-house, *Kelly* took up the Letters that were directed thither, in Answer to those Letters that were of his Hand-writing; which they apprehended was so strong an Evidence joined with the other, that one or two Witnesses, who came and said they believed it not to be his Hand-writing, should not overthrow.

But they had produced another Piece of Evidence, relating to the Letters of the 20th of *April*, enclosed in the Packet, which was directed to Mr. *Alexander Gordon*, a Banker at *Boulogne*, namely, A Certificate upon Oath, That he was no Banker, or receiv'd any Packet from *Kelly*, or knew him. Their Lordships would observe, that this was a Paper brought here by a Person that knew nothing of its being sworn, but said, he was used to Transactions of that Kind, and believed it to be a Certificate from *Boulogne*; but they should produce one who was at Mr. *Gordon's* at *Boulogn*, when the Report came thither: And discoursing of this Matter, Mr. *William Gordon* the Father, said he was at *Paris* when the Packet came; but Mr. *Alexander Gordon*, the Son, own'd he was at Home, and received the Packet; and that he delivered it, as mentioned in the Appendix to the Report.

They had produced a Witness also to prove, that *James Talbot*, to whom the Packet is said to be deliver'd at *Boulogn*, was at *London* the 29th of *April*, when it was supposed to be delivered; but the Evidence went no further than to prove, that one *James Talbot*, a tall black Man, was then in Town; but it did not appear this was the Person

mentioned to have taken the Packet, and carried it to *Paris*; and they should shew from Mr. *Crauford*, his Majesty's Resident at *Paris*, that *James Talbot* came to *Paris* that very Day he is mentioned to have brought those Letters to *Paris*.

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Another Evidence was Mr. *Pope*, a Gentleman of Learning, with whom the Bishop used to converse; who deposed, he knew nothing of this Conspiracy; that the Bishop never acquainted him with it: Their Discourse was only about Matters of Literature; and there was no Doubt that his Lordship had conversed with Persons on different Subjects, to whom he would not communicate an Affair of this Nature. And they submitted it to their Lordships, whether upon the Whole they had not made out the Charge against the Bishop to their Satisfaction; if not by legal Evidence, yet by Evidence that would satisfy and convince any Person that would consider it.

That a great Regard was to be had to the Character and Function of this Reverend Prelate: But if he had departed from his Character and Function, and engaged in a traiterous Conspiracy, and been guilty of Treason towards his King, and Perjury to his God, his Character and Function were so far from being a Mitigation, that they were a great Aggravation of his Crime; and they submitted it to their Lordships to do what they thought consistent with Justice and Equity.

Mr. *Wearg*, Solicitor General.

Mr. *Wearg*, being also Counsel for the Bill, reply'd to the Bishop's Defence; which he observ'd his Lordship had made with the utmost Force and Beauty of *Eloquence*: And though it might be excusable in his Lordship's Circumstances, to make use of that powerful Instrument of Error and Deceit, which always imposed upon the Reason, and misguided the Judgment in Proportion, as it affected the Passions; yet he could not think the same Methods justifiable in the Prosecutors. He should therefore examine the Force of what had been offer'd on Behalf of this Reverend Prelate, strip'd of the Ornaments and Colours of Rhetorick,

rick, and first consider that Catalogue of Hardships he complain'd of.

1. As to the Indignities offer'd to him during his Confinement, he was credibly informed it was a Complaint without Foundation.

2. And as to the Extracts of Letters read against him, it had been declar'd, they were only read upon the general Part of the Bill, and did not affect his Lordship.

3. The Reason of excusing the Decyphers from answering the Questions proposed by him, was, because they could not disclose what tended to the Discovery of their Art, without doing a manifest Prejudice to themselves, which no Witness was ever compelled to do.

4. The next Hardship, the not Suffering the Clerks of the *Post-Office* to be examined, as to the Method and Authority by which they open'd Letters, was, because they might by their Answers be subjected to the Penalties of the Statute of 9 *Anne* ; and it could not be material to his Lordship's Defence, whether they open'd them with or without Authority.

5. The fifth Hardship, the Refusing to let Mr. *Lewis* declare any Thing he knew, by being employed in the Secretaries Office, could only be added to fill up the Catalogue of Complaints, since Mr. *Lewis* had declared what he was called for.

6. The sixth Hardship, the Reading an Examination not dated, signed or sworn to : It was read as an Examination, or rather Confession of a Person since dead ; and they left it to their Lordships to have such Weight, as the Nature of the Evidence deserved.

7. As to the Reading Letters wrote by another Person without Proof they were wrote by his Privy : This was begging the Question upon the whole Proceeding.

8 and 9. The two next Hardships seemed to be calculated for Persons without Doors, who were Strangers to what passed here ; *That he was de-*

nied a Copy of the Letters in Cypher, till it was too late to make a proper Use of such Copies; for he had twice as much Time, as he desir'd, for his Decyphers to peruse them——And as to his being refused to read any of the Papers contain'd in the Trunk, he was refused but one Paper in it; and that, because it was to raise an Objection to a Matter which had not been insisted on by the Counsel for the Bill.

This would seem incredible to one who should read his Catalogue of Complaints; and yet these were some of those Complaints, which, by the Assistance of a warm and masterly Stile, drew Tears from some of their Lordships Eyes; and yet when strip'd of their false Beauty, and examin'd by the sure unerring Rules of Wisdom, appear'd to be without Foundation, and to have been made without that strict Regard to Truth, his Lordship would be thought always to have.

From these Complaints he proceeded to support some of the Objections his Counsel had made to the Bill, as that it was a Bill *ex post facto*; and they had been called upon to shew against what Law he had offended: But was the Corresponding with the Pretender and his Agents, in Order to subvert the Constitution, against no known Law? And could they be said in this Case to be making a Law, which could not be a Law in the Case of any other Person.

But his Lordship, sensible of this Answer, had given it an artful Turn, by applying it not to the Fact, but to the Evidence: He argued, that accumulative Evidence was as unreasonable as accumulative Treason; and objected, That Proofs which communicated Light and Strength to each other, had only the Formality, without the Force of Evidence; but this Objection was destructive of all Proof that was not mathematical; for all other Proof must necessarily be what he called accumulative, must consist of a Variety of Facts and Circumstances laid together, sufficient to induce Belief.

It had been objected further, That a Subject of *England* could not be convicted but by legal Evidence; to which he agreed; but at the same Time affirm'd, That this was a Trial agreeable to the Laws of *England*; and that a Proceeding of this Nature was as necessary a Part of our Constitution, as the Establishment of the ordinary Courts below.

What was legal Evidence, depended on the Nature of the Enquiry, and the Judicature where it was made: Depositions in Writing were Evidence in a Court of Equity, but not in a Court of Law; in Felony and Misdemeanor, one single positive Witness, or Circumstances only were legal Evidence; tho' in Treason, the Law requir'd two Witnesses in the Courts below.

In parliamentary Inquiries, which were not restrain'd by any Act, every Thing was legal Evidence which might tend to a Discovery of Truth.

The Counsel on the other Side had at length admitted the Power of Parliaments; but urg'd, That it never ought to be exercis'd, but in Cases of Necessity, instancing particularly in the Bill against the *South-Sea* Directors; but was there any Comparison between the Offence of those Men, and of one who had endeavoured to subvert the Constitution both Civil and Religious.

When they reflected on the Endeavours that had been carrying on ever since the Establishment of the Protestant Succession, that the many Discoveries of their Plots and Examples of Justice, had no other Effect than to make them more Subtle and Cunning in avoiding the common Forms of Law: It shew'd the Necessity of such a Proceeding, to convince the World agreeable to their Lordships Report, That as Artifice and Disguise do not lessen the Danger to the Publick, nor mitigate the Guilt of the Offender; so neither ought they to protect him from Punishment.

The next Objection was address'd to the Lords Spiritual, who were told, That no Civil Power on Earth could deprive a Bishop of the Exercise of his Function; That must be done by another Ju-

dicature.

dicature.—— Whether an Act of Parliament could so far deprive a Bishop, as to make his Acts invalid, he should not enquire into now; but it was admitted on all Hands, that it might restrain a Bishop from the Exercise of his Function in any Part of this Kingdom, so as to make the Exercise of it criminal in him.

Bishop Fisher.

His Lordship had said, That this was the first Instance of a Member of this House being judg'd in another; but he had forgot the Case of one of his Predecessors in the See of *Rochester*, in the Reign of *Henry VIII.* against whom a Bill was brought in the House of Commons, inflicting Pains and Penalties; and afterwards received the Approbation of the Lords, and the Royal Assent.

Their Objections were clos'd with a very pathetic Admonition against the Consequences of this Bill.—— The wisest Man could not foresee, nor the most innocent Man declare himself safe after the Passing it.—— That a wise Man should not be able to foresee what would happen hereafter, was not very strange; but he must be a wise Man indeed that could foresee any Danger to Innocence from the Proceedings on this Bill: Their Lordships had attended the Hearing this Cause seven Days together, and given the Person accus'd all Opportunities of making out his Innocence; and whoever should cite this Precedent as a Handle for Oppression and Injustice, would be guilty of the same Oppression and Injustice without this Precedent.

That the Counsel for the Bishop had been so far from weakening *Neynoe's* Evidence, that they had added Strength to it; the Inconsistences in his Examination were not *Neynoe's* but *Kelly's*.

—— That, at the very Time he was deluding a great Man with Confessions, either to get Money out of him, or to find an Opportunity of making his Escape, he should declare to *Skeene*, and *Steward*, that what he confess'd was false, was not only improbable in it self, but appear'd by their Evidence to be a mere Fiction of their own.

—— It appear'd to be an Attempt by a Parcel

cel of desperate People engaged in the same Interest, to weaken *Neynoe's* Evidence, whom they look'd upon to be the Betrayer of their Cause and Party.

It had been said, That the Bill was supported by *Innuendo's*, by Arbitrary and Invidious Interpretations; but was it an Arbitrary Interpretation, when a Letter says, I saw Mrs. *Illington*; he is in great Tribulation; his Obligations are the same; to apply this to a Man.—— When Letters gave a Caution not to write any more till new Books of Account were settled;—— When they express'd a Doubt, Whether they were betray'd by false Friends or an open Enemy;—— And talk'd of having Wine, but wanting Barrels;—— Of the Absence of the King and Court, as a proper Opportunity of sending over their Wine;—— A Man must have laid aside the Use of his Reason, that could think this the Language of Persons really Dealing in a Mercantile Way; it was the ordinary Cant of a treasonable Correspondence.

They had objected further, That it was unreasonable to apply the Circumstances relating to *Jones* and *Illington* to the Bishop, and demanded, If no Body else was out of Town but the Bishop? Was he the only Man who had got the Gout, or had lost his Lady at that Time? And 'twas true, if these Questions were ask'd singly, there might be other Persons in the like Circumstances.

But the Question here was, If any other Person was in Town the 7th of *May*; out of Town the 10th and 14th; in Town the 15th; whose Wife died the 26th of *April*, he himself then ill of the Gout; to whom a Dog was sent by the Name of *Harlequin*, that broke its Leg and was brought to Mrs. *Barnes* to be cur'd: These were the Circumstances of *Jones* and *Illington*, and these were every one true of the Bishop of *Rochester*, and could not be apply'd to any other Person.

But they seem'd to be convinc'd, that the Bishop was too well describ'd in this Correspondence, under the Names of *Jones* and *Illington*, and there- Page 456.

therefore endeavoured to give it another Turn, by saying, it was a malicious Contrivance of some Persons, who had inform'd themselves of his Lordship's Motions, and the Circumstances of his Family; but this was the common trite Excuse of every petty Offender; there was not a Trial where the Defendant did not complain, It was all a malicious Contrivance of his Enemies.——

But here they had prov'd *Kelly's* Hand; they had shewn him to be an Acquaintance of the Bishop of *Rocheſter's*; nay, it was confess'd, and yet his Lordship had given no satisfactory Account how he came to contract an Acquaintance with a young Fellow, who had deserted his Orders, and was a profess'd Nonjuror; it could not be presum'd that *Kelly* had no other Employment under the Bishop, than to furnish him with Beaver Stockings, which the Bishop own'd to have receiv'd as a Present from him.

It had appear'd, by a Letter under his Lordship's Seal, and of his own Hand-writing, That *Johnson*, i. e. *Kelly*, was the Person in whose Hand the Bishop return'd his Answers; for no Account was given of this Letter, by whom it was wrote, nor to whom, nor how it came among his Lordship's Papers: He demanded, indeed, if it was agreeable to the Cunning with which he was charg'd, to keep such a Letter by him, on Purpose to furnish his Enemies with Evidence.—— To which he answer'd; it was probably left among his Papers accidentally; and it was by such little Accidents that the most cunning Men were detected; there was no Danger of their committing greater Oversight.

The Evidence of the Bishop's Servants, of his being ill at *Bromley*, and seeing no Body during the Time the Letters were suppos'd to be written, was not to be regarded; for one of them being ask'd a Question concerning a Letter directed to *Dubois*, refus'd to give any Answer till the Bishop gave him Leave; which shew'd too great an Attachment to his Master's Interest, to deserve much Credit; a second Witness did admit, that the
Apothecary

Apothecary or Minister might be with the Bishop, without their Knowledge, and why not Mr. *Kelly*, whose Visits requir'd greater Secrecy: The Rest of the Servants contradicted these, admitting that two other Gentlemen were at the Bishop's at *Bromley* during the Time in question; and yet they plainly shew'd a greater Regard for their Master's Interest than for Truth; and indeed his Lordship, since he knew of their being Witnesses, had given each of them a Place, as Dean of *Westminster*.

The next Arguments us'd in Behalf of the Bishop, were rais'd from his unambitious resign'd Temper, and from the Style of these Letters; but their Lordships were much better acquainted with his Temper and Style, than he could pretend to be.

The last Part of his Defence consisted in a solemn Protestation, not of his Innocence, for it was conceiv'd in such Terms as not to contradict any Part of the Charge; it was chiefly calculated to answer some particular Circumstances of Times, without any Denial of the General Charge (surely this is false) or the least Declaration of Affection or Loyalty towards his present Majesty; but had it been a direct and positive Denial of the Charge, it ought not to have any Weight with their Lordships, since it was a Defence equally in the Power of the most Guilty as well as the Innocent; and he must observe, that his Lordship had not always that strict Regard to Truth he ought to have, as appear'd by the Papers taken upon his Servant at the *Tower*. Page 458.

He observ'd further, That the Nature of the Punishment had been the Subject of great Lamentations; but he might venture to affirm, it was the mildest Punishment that ever was inflicted for such an Offence; for neither his Life, his Liberty or Property were affected; he was only expell'd the Society, whose Government he disapprov'd, and had endeavour'd to subvert, and was depriv'd of the publick Employment which that Government had entrusted him with.

The Enjoyment of his Life, his private Estate,
and

and his Liberty under any other Government that might be more agreeable, was allow'd him. This could scarce be call'd a Punishment, being no more than what was necessary for the publick Security; and as the Commons had done their Parts towards providing that Security, he did not doubt but it would meet with their Lordships Concurrence.

Upon the third Reading of the Bill, *May* the 15th, there happen'd a long Debate, in which the Bishop of *Salisbury*, made a set Speech against his Right Reverend Brother, the Bishop of *Rochester*.

Bishop of *Salisbury*'s Speech for the Passing the Bill.

He said, he should first take Notice of what had been particularly address'd to that Bench; whether it was agreeable to the Canons and Discipline of the Church in this extraordinary Manner to deprive a Bishop of all his Preferments, and prohibit him the Exercise of his Function for Life?

And when he consider'd all the Acts of Parliament relating to the Supremacy that had been made for near Two hundred Years; the Articles and Canons of the Church, and the Subscriptions the Bishop himself must have made; he wonder'd that such an Objection should be made by a Bishop of the Church of *England*, or by a Lawyer of this Kingdom; he did not indeed remember more than one Act that had been made to deprive a Bishop, which was that of *Fisher*, Bishop of *Rochester*, who was depriv'd in the Reign of *Henry VIII*. But by a general Act in the Reign of *Queen Elizabeth*, almost all the Bishops of *England* were so depriv'd; and at the Revolution several more; and at the Restoration many hundred Presbyters were depriv'd in the same Manner: And the same Authority that could deprive the whole Bench, might exert it self in a particular Case.

In the Trial of Bishops, the Nature of their Crimes were to be consider'd; if they were of an Ecclesiastical Nature, as Simony, Heresy, and the like, the Trial must regularly be by the Arch-
shop

shop of the Province, assisted by his Suffragans; but if he should acquit or absolve him, such Bishop might be try'd and depriv'd by a Court of Delegates: And if the Crime was of a Civil Nature, such as Treason, which was the Case before them; the Ecclesiastical Authority had nothing to do with it: And he observ'd further, That if this Bishop had been try'd in the common Course of Law, either by their Lordships, as a Member of that House, or by a Jury in *Westminster-Hall*, and Sentence of High Treason had pass'd upon him, he had been *ipso facto* depriv'd of his Bishoprick, if he were not executed in Pursuance of such Sentence; and the Way that was now taken to deprive him, was the only Way wherein the Bishops could have had any Part in the Sentence of Deprivation. As to the Admonition, That they would do well to consider what they were doing; That they did not make the Titles to their Bishopricks precarious; he answered, It became them, as they had the Honour to have Seats in Parliament, to take Care to do Justice; as on the one Side to the Prisoner, and on the other to their King and Country, and to trust in God, That in so doing, they should neither hurt themselves nor their Successors; the Argument to him seem'd to lie the other Way; if for Want of doing Justice against Traitors to King *George*, the Pretender should happen to prevail, the Titles of Protestant Bishops were like to be very precarious indeed.

As to the Power of Parliaments to pass Bills of Attainder; they had always exercis'd it, and it was essential to the very Being of the supreme Power; and though the Exercise of this Power might be dangerous to Persons who would venture upon treasonable Practices, trusting to their Cunning and Artifice to skreen them from the Law; yet he had that Confidence in the Justice of the Crown, and the two Houses of Parliament, that as long as this Example was follow'd, of giving a full and fair Hearing to the Persons accus'd, innocent Men could not easily suffer.

As

As to these Words of St. Paul to Timothy, *Against an Elder receive not an Accusation; but before two or three Witnesses*; which his Lordship interpreted, that an Accusation should not be receiv'd against an Elder or Presbyter, but *upon the Oaths of two or three Witnesses*; he observ'd, that it was not *upon the Oaths*, but *before Two or Three Witnesses*, which seem'd to import a very different Sense; and that in the Sense the Bishop put upon them, they were not receiv'd in any Court.

He observ'd further, That whatever the Sense of these Words were, they regarded only the Conduct of a Bishop to his Presbyters, but were never intended to give Law to the supreme Power of a Kingdom, in Proceedings for High Treason against a Subject.

As to the *Jewish Law*, requiring two Witnesses at least; if that was allow'd to oblige us, yet the Meaning of it could never be, That all Controversies and Accusations whatever should be determined by Witnesses, and no other Way; and that those Witnesses must swear directly to the Fact, as that they saw such a Man murder another, and the like; but it was sufficient that they swore to such Circumstances as inferr'd a strong and violent Presumption, that such a Fact was committed by such a Person.

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In our own Nation we had from political Considerations determin'd, that there must be Two Witnesses to some one or more Overt Acts of the same Treason; but as to all other Crimes that equally affect the Lives and Estates of the Subject, this was not the Case: Chief Justice *Coke*, in his first *Instit. fol. 6.* says, 'When a Trial is by Witnesses regularly, the Affirmative ought to be prov'd by two or three Witnesses, or other Kind of Evidences; but upon the Verdict, and upon such Evidence as is given to the Jury, they give their Verdict; and many Times Juries, together with other Matter, are much induc'd by Presumptions.'

If therefore our Law, in Cases of High Treason, requir'd positive Witnesses, it was not from any moral Necessity or Point of Conscience, but for political Reasons, which must always be subject to the Judgment of Parliament.

As to the Bill it self, he observ'd, it had been objected, That it was contrary to the Liberty of the Subject, who had a Right to be try'd according to the Laws of his Country; he should consider therefore wherein the Liberty of *England* consisted: People were apt to imagine, that the Difference between us and some other Nations was, That they were under absolute Power, and we were not; whereas in Truth all Countries that were supreme in themselves, had equally an absolute Power: No Government could subsist, if there was not a Power in it to change, abrogate, suspend or dispense with its Laws, as Necessity or Convenience requir'd; therefore the Difference between one Government and another did not lie in this, That one had such a Power, and the other had not, but merely in the Difference of the Hands in which that Power was plac'd: Where this was plac'd in one Hand, in the King, it was call'd an Absolute Monarchy; but where it was in the King and States, it was call'd a Limited Monarchy; and the People that liv'd under such a Government, were call'd a Free People, because they liv'd under Laws that could not be made, alter'd, or dispens'd with, but by their own Consents.

And the Right which the Subjects of such a Country had to its Laws, was a Right to claim the Benefit of them against the Crown, or any Court acting under the Crown, till the States of the Kingdom thought fit to alter them; but if the King and People thought fit to come to a new Agreement, and alter such Laws, there was an End of all Claim of Right in the Subject; for every Man virtually consented to what was done by an Act of Parliament.

There was a Difference indeed between the Eternal Laws of Justice and Righteousness, and all positive Laws whatever. As to the First, We

were made for them, and the nearer we conform'd our selves to them, the more excellent Creatures we were; but as to positive Laws, they are made for us, and the more they conform to us, the more they obviate all our Wants and Difficulties, the better they were.

As to that Complaint, That their Lordships had admitted Evidence to be read, that would not be admitted in other Courts; he conceiv'd, That Acting in the Capacity they now did, they had Power to do it without Breaking the general Rules of Justice; they had let in all the Light they thought proper, to give a full Knowledge of the Matter; and this he apprehended was their Duty; but in forming their Judgments, he took it for granted, their Lordships would distinguish, and lay no more Weight upon any Thing than it deserv'd.

As to their Rules of receiving Evidence in *Westminster-Hall*; they were no Part of natural Justice, as appear'd from their being different in different Courts, and different from those of other Countries; and differ'd here according to the different Causes or Crimes that were to be try'd.

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He proceeded next to consider, Whether the Bishop was guilty of the treasonable Practises charged upon him; and *Kelly's Cause* being so nearly connected with that of the Bishop's, he observ'd, in the first Place, as to *Kelly*, that one strong Presumption of his Guilt was, his Resisting the Officers when he was first taken up, and the Hazarding his own Life, and the Life of one of the Officers, to procure an Opportunity to burn his Papers; it was prov'd also, That after he was taken, the People at his Lodgings burnt the Rest of his Papers, which was a plain Evidence that they, that knew his Life and Conversation, suspected he was guilty; and Thirdly, Another strong Presumption of his Guilt, was his Offering several Sums of Money to the People of the House where he was in Custody, to let him escape the second Time he was apprehended.

But the chief Evidence of his Guilt were a great Number of intercepted Letters, both from him and to him, containing treasonable Matters; the sending and receiving of which he thought had been fully prov'd.

As to the Bishop, It was a great Trouble to him to think that a Prelate of this Church should be guilty of so foul a Crime; but he was of Opinion, that whoever believ'd *Kelly* to be guilty, must believe the Bishop to be guilty too.

The Conduct of a Protestant Bishop must have been very unaccountable, if he was innocent; That so many *Jacobites* should declare, that they not only esteem'd him to be in the Plot, but to be the chief Conductor of it (who were those *Jacobites*, does not appear in the Trial; we hear of none but *Neynoe*, and indeed the Bishop seems to lay a great Stress upon *Neynoe's* Hearsays).

He observes further, That a Letter was taken among the Bishop's Papers, from a Lady of great Quality, in which she tells him, *That she had sent something that she receiv'd; she could not tell from whom, but let it be from whom it would, she thought he might be trusted, and that it could not be put into better Hands:* This the Bishop had given no Answer to, though objected to him by the Counsel; which he thought a strong Suspicion, that there was a Correspondence by cant Names, which the Lady did not perfectly understand, but believ'd the Bishop might; or however, That he was in all Events a Person to be trusted. Page 462.

Another very suspicious Circumstance against the Bishop, was the Letters from Captain *Halstead*, added to that of this Captain's waiting upon him, and staying with him an Hour, a little before he went to fetch over the Duke of *Ormond*; sure the Bishop had given no Account of the Reason of his Acquaintance with him in general, or the Reason of that Visit in particular, at a Time that left so much Ground to suspect the worst.

In the following Observations on the three Letters, there is nothing but what had been observ'd by the Counsel for the Bill: He concludes his Re-

Page 463.

marks on them; with delivering his Opinion, That he could not but think it very clear, that the Bishop might and did dictate those Letters.

He said further, That had there been what was call'd legal Evidence, he took it for granted, their Lordships could not easily have come into this extraordinary Method of Proceeding; for though the Parliament had this Power, he did agree that it was a Power not fit to be us'd, but when the publick Good requir'd it, which he conceiv'd was the present Case; a dangerous Plot had been discover'd; a great Number of Letters and Papers relating to it, laid before the Parliament, and the Eyes of all *Europe* were upon them, to see what they would do. Though the Evidence of the Plot in general was as clear as the Light, and the Evidence against several particular Persons very plain; yet as the Laws were, it was not what they call'd legal Evidence. The Parties concern'd would make no Confession, and they had not the Methods used in other Countries, to extort Confessions; and should they see their King and Country in Danger, and do nothing for them? Should Conspirators go unpunished, because they were obstinate, and artificially skreen'd themselves behind the Law; if this appear'd to be the Case, they should appear ridiculous in the Eyes of all the World; their Friends and Enemies, both at home and abroad, would think that they had no Zeal for the Preservation of their King and Government; which must encourage their Enemies, and discourage their Friends, and bring them into that contemptible State, in which no Government was ever long supported.

It had been observ'd, That the best Way to serve the Government, was to do popular Things; which was very true; and the Government had done so as far as it was able; our Religious and Civil Rights were protected; we liv'd in Peace, while other Countries suffer'd the Miseries of War, (what Countries does he mean) and these were popular Things; if some other Things had not been done for the good of the People, it was
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the Fault of them that complain'd most: If there were Discontents in the Kingdom, the Foundation of them was laid long ago, by the Enemies of the present happy Settlement; for Discontents were higher within four Months after the King's Accession, and shew'd themselves more in rebellious Riots and Tumults, than they did at present; and yet nothing could then be objected to the Government, but that some Persons were not prefer'd; who both before and since had made it too plain they were not fit to be trusted. Page 464.

But as those in Power ought to do popular Things; so Subjects ought to put the best Interpretation on the Actions of the Government, and not misrepresent them, and publish Lies and Slanders to alienate the Affections of the People; which had been done by some who would take it very ill to be call'd *Jacobites*; and these were the Occasion of all the Disaffection and real Grievances we labour'd under. Was the King oblig'd to keep up a greater Force than would otherwise be needful, it was entirely owing to this Cause; were our Debts unpaid, our Credit not so good as could be wish'd: Let false Rumours cease, and these Things would quickly mend; and he thought it might be prov'd, That our Debts had never been contracted, but for this discontented Humour, (How does he make this out? Most People think the Continuing the War seven Years longer than was necessary, the Principal Occasion of our Debts; at least this added upwards of forty Millions to what was contracted before); nay, to this we might ascribe this very Plot; which was carried on upon the Confidence, that all disaffected People were *Jacobites*: And though the Conspirators were greatly deceiv'd in this; it was certainly built on this Foundation.

It had been observ'd further, That this extraordinary Proceeding would rather prejudice the King's Interest than promote it; and he did believe the *Jacobites* might be very angry; a plain Evidence that they did not think the Friends of King George were worrying one another, for

they would not be angry at that; those who desir'd most to destroy our Liberties were become the great Patrons of Liberty; and indeed, no sooner were their Schemes of Arbitrary Power defeated by the Revolution, and a new Government settled, but in order to destroy it, they oppos'd every Thing that was necessary for its Defence, under Colour of Liberty; That is, they desir'd their own Hands might be loose, and the Hands of the Government so tied up, that it should not be able to hurt them, or defend it self.

Thus they clamour'd against additional Forces, and against all Methods us'd to discover or punish a Conspiracy, that they might be free to carry on their Plots, and put them in Execution without Danger: For these Reasons, no doubt, they would be angry; but he thought it better, that disaffected People should be angry with them for defending themselves, than that they should first sneer at the Government and its Friends, as Fools for neglecting their Defence, and then be able the more easily to destroy them.

As their Friends abroad would respect them for this Conduct; the Subjects at home also would shew more Zeal for the Government, when they thought it safe and able to protect them; and therefore he hop'd their Lordships, by their Zeal and Unanimity in this Matter, would convince the World, that the Danger lay in opposing, and not in defending the present Government.

He observ'd further, That their Lordships Moderation had been great, in giving the Bishop so full and fair a Hearing, and making the Penalties so much less than the Crime deserv'd; for it was a Plot of a most desperate Nature, to seize the Persons of the King and Prince, and bring in a Popish Pretender; which was to have been begun by Seizing the *Tower*, and attacking the City of *London*, and from thence to have spread it self into all Parts of the Kingdom. But, Lord! What Confusion, what Murders, what Plunderings, what Burnings must this have caus'd; how many of the Noble Lords he now saw must have been in their
Graves,

Graves, if it had succeeded; and though this Plot had been discover'd above a Year, how very little of it did they yet know (from whence some were apt to infer there was very little in it); and he appeal'd to their Lordships, if there was any Country in the World, whether Bond or Free, which, if they had discover'd but a fifth Part what they knew of a Plot of this Nature, and would not in a Week's Time have found Means to have got to the Bottom of it; but still he commended their Lordships Moderation, and hop'd they would never have Reason to repent it; That this little they had done would be a Warning to Conspirators, not further to provoke the Patience of an injur'd Nation; and he hop'd their Lordships would always stand by a good and merciful Prince, and according to their Oaths defend him against all Treasons and traiterous Conspiracies whatsoever; That they would never suffer a Popish Pretender to be at the Head of a Protestant Church, one who thought himself bound in Conscience to destroy it; and instead of that pure Religion we enjoy'd, would bring in horrible Superstition and Idolatry, Nonsense and Tyranny; attended with such sad Calamities as Popish Princes ever brought upon Protestant Countries.

The Duke of *Wharton* said, some Things had fallen from the Reverend Prelate who spoke last, that induced him to give his Reasons why he differ'd from him in Opinion as to this Bill; he had been pleas'd to say, that Persons without Doors would be apt to cast different Reflections on the particular Behaviour of every Lord that Day; Those who were for Passing the Bill would be accus'd of Malice and Partiality; and those who were of contrary Sentiments, branded with Disaffection; but he was far from thinking that Considerations of this Nature would have any Weight with their Lordships; That the Evidence alone was to be consider'd, and they would proceed according to the Rules of Justice, and not fear any Consequences that might attend the Discharge of their Duty: He would venture to affirm, that the

The Duke of
Wharton's
Speech on the
third Reading
of the Bill.

best Way to shew their Zeal to his Majesty and the present Government, was both in their Judicial and Legislative Capacities to act with Honour and Impartiality.

He agreed with the Reverend Prelate who spoke before him, That it was proper, a Power of Punishing by Bills of Attainder should be vested in the Legislature, to be exercis'd on extraordinary Emergences; but if that Power was abus'd, if ever it was employ'd to destroy innocent Persons, it was evident, the Lives, Liberties and Fortunes of every Subject were in the utmost Danger, and liable to be sacrific'd to the Fury of a Party.

Every Bill of Pains and Penalties was to stand upon its own Bottom; one Act of that Nature was not to be brought for the Support of another, unless there was convincing Evidence to enforce each Case; and therefore the proper Consideration before them was, Whether the Evidence offer'd against the Bishop accus'd, was sufficient to induce them to believe him guilty.

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If the Bishop's Crimes had been plainly prov'd, he did admit that his Sacred Character and Station in the Church would be an Aggravation of his Guilt; but then their Lordships would require very clear Proof before they would think it possible, that a Protestant Bishop, who had signaliz'd himself in Defence of the Reformation; and the only one of that Bench that had wrote in Favour of *Martin Luther*, should engage in a Conspiracy for introducing Popery and Arbitrary Power.

The Counsel for the Bill, at opening the Charge, had acknowledg'd, That it was only supported by decypher'd Letters, full of fictitious Names and Cant Words; they were so fair as to confess, they had not one living Witness that could charge the Bishop with any Thing, or so much as a Letter under his Hand; therefore, at the first View, the Condemning him on such Evidence, ought to require the utmost Caution, lest they should establish a Method, which their Enemies might hereafter take to destroy the greatest and most innocent Subject in the Kingdom.

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The first Piece of Evidence that had been offer'd, was the Extracts of Letters from abroad; which the House seemed to declare immaterial, when they did not so much as desire to see the Copies of the entire Letters, or the Originals; and admitted one to be read that was anonymous. And it was observable, that through the whole Correspondence, the Bishop of *Rochester* was not named; and therefore he could not see why they took up the Time of the House, in reading Papers foreign to the Case, especially since every Body allowed there had been a Conspiracy, which was the only Fact to be gathered from them.

The next Point attempted to be proved was, That Capt. *Halstead* went to fetch the Duke of *Ormond*, and was at the Deanery with the Bishop, before he embarked; and two Letters found in the Bishop's Closet, from the Captain to the Bishop, were read, containing Appointments of Visits, but nothing else: And the Coachman deposed, that *Halstead* was an Hour with the Bishop before he left *London*.

But this Design of *Halstead's* bringing the Duke of *Ormond* to *England*, was only prov'd by Hearsay: One of the Ship's Crew had deposed, That there was a Report at *Bilboa*, that *Halstead* came on that Errand; and he submitted, how far common Fame ought to prevail?

But if this Hearsay was true, Was every Person that was an Hour with *Halstead* before his Departure, supposed to be privy to this Project? What a strange Construction must it be, that the Bishop of *Rochester* knew of this Conspiracy, because *Halstead*, who was a Tenant of his Bishoprick, made him a Visit? And this was the more extraordinary, since it was not pretended there was any Correspondence between the Bishop and the Duke.

Then some decypher'd Letters directed to *Dumville* were produced; but it appeared from Mr. *Willes* himself, who decyphered them, that this was an Art that depended on Conjecture; That his Brother Decypherer had varied from him,

him, in one or two Instances; and that the Chasms they were forced to leave, might alter the Sense; therefore he could not but think an Accusation grounded on such Proofs to be uncertain and precarious: What the Decypherer said was taken for granted, because his Key could not be produced with Safety to the Publick; and thus their Lives and Fortunes were to depend on the Skill and Honesty of Decyphers, there being no Means of contradicting them. In the Case of *Coleman*, the Key was printed; and he was surprized the Gentlemen of the Secret Committee did not, for the Satisfaction of the Publick, permit them to see the Key, on which depended such a Train of Consequences; as he should be very far from condemning a Man on his own Conjecture, he should much less do it on the Conjectures of others.

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The greatest Certainty was mathematical Demonstration; but if he was to be try'd on a Proposition of Sir *Isaac Newton's*, which he should swear to be true, he would appeal to their Lordships, whether he should not be unjustly condemn'd, unless he produced his Demonstration, that he might have Liberty of enquiring into it, from Men of equal Skill: But after all, in these decypher'd Letters to *Dumville*, there was nothing mentioned that could affect the Bishop: He was not named in them.

As to the Examinations of *Neynoe*, he would do the Counsel for the Bill that Justice to say, that they forbore mentioning any Thing of them when they opened the Charge; they were so sensible that those Papers could not affect the Bishop, That tho' they were produced in *Kelly's* Case, as material to support that Bill, they did not think fit to urge them against the Bishop; which he was perswaded was owing to what appeared in *Bingley's* Examination, and the universal Opinion that every one seemed to have of the Villany of *Neynoe's* Transactions; and indeed, as they were never sign'd or sworn, no manner of Credit could be given to them.

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But though these Papers were given up by the Counsel for the Bill, yet an Extract of them was suffer'd to be read, which was the visible Foundation of this Charge: If they were insignificant, the whole Charge fell to the Ground; for the whole Proof of the Bishop's dictating to *Kelly*, depended on *Neynoe's* bare Affirmation, That Mr. *Kelly* told him he wrote the Bishop's Letters for him.

And if they consider the Improbability of this Evidence; if it had been upon Oath and sign'd, it could never have been credited: Could it be supposed he was employed to draw up Memorials to the Regent, when nothing of that Nature had appeared? That he was employed in it by the Earl Marshal, and lay with him several Nights, (which Facts the Lords would not suffer the Bishop to enquire it): Could it be supposed the Earl Marshal reposed so great a Confidence in a Person he was a Stranger to, and of so little Note? And was the *Jacobite* Party in such a low Condition, as to make Use of so poor a Creature, to write Papers of that Importance.

There was so much Improbability in this, and so much Contradiction in several other Parts of his Examinations, that they appeared to be rather the Dictates of Fear, than agreeable to Truth.

But what made it impossible to give any Credit to them, was the several Testimonies of *Bingley*, *Skeen* and *Steward*, who were now in the Hands of the Government: *Bingley*, though he was long under Examination at their Lordships Bar, never varied from any Circumstance he had sworn to before, but appeared consistent thro' the whole Course of his Behaviour. He deposed, That *Neynoe* abounded in Money, which he said, Mr. *Walpole* gave him, and particularly 50*l.* which, he said, he received of him the Night before he went to *France*; That *Neynoe* assured him, he used to meet that Honourable Person in the Stable-yard at *Chelsea*; and the Errand, on which he was going to *France*, was to discover some Se-
crets

crets relating to Cyphers, which he would have engaged *Bingley* to have done for him; and particularly to gather out of *Kelly*, if possible; which he said would be of great Advantage to him; That *Neynoe* had declared to him, he would be even with Mr. *Kelly* before he was aware of it, or Words to that Effect; and that Mr. *Kelly* always seem'd averse to any Acquaintance with Mr. *Neynoe*, of whom he entertained a mean Opinion.

That *Neynoe's* Father refused him Money, which makes it highly probable that his Poverty was the Occasion of his Villany; and that when he was taken at *Deal*, he had declared to him, Mr. *Walpole* expected to find the Plot about him; and since Mr. *Walpole* could not, he must make one for him.

Neynoe told *Bingley*, That this Honourable Person had vowed Destruction to the Bishop of *Rochester*, by saying, *He would pull down the Pride of this haughty Prelate*; which is sufficient to convince your Lordships, how little Regard ought to be had to the Hearsay Evidence of so false a Wretch.

Mr. *Bingley* says, That Part of this Account had been given to the Lords of the Council, and he could have wish'd that his Examination (as well as some others, to the same Purpose, which were taken about the same Time) had been laid before the Parliament.

Mr. *Skeene*, who is also in Custody, has deposed, That he lay in the same House with *Neynoe*, and had some Conversations with him.

That *Neynoe* had told him, what he had said of the Bishop of *Rochester*, was intirely false. And that Mr. *Walpole* had offer'd him a considerable Annuity to turn Evidence, and had given him Instructions before he was called into the Lords, what Questions would be asked him, and what Answers he should make; and threaten'd him with *Newgate*, if he would not comply.

Skeene says further, That *Neynoe* swore, by God, there were two Plots; one of Mr. *Walpole's* against

gainst the Protesting Lords, and one of his to bite Mr. *Walpole* of Money; and this seems to be the only Time that ever Mr. *Neynoe* averr'd any Thing upon Oath.

To convince the World what a Creature this *Neynoe* was, he tells *Skeene* further, That once at Lord *Townshend's* Office, he had a great Inclination to have stabb'd the Chancellor of the Exchequer: He says *Neynoe* had wrote a Paper to declare, That all he had said of Lord *Orrery* was false. The next Witness was Mr. *Stewart*, who was unfortunately in Custody, when *Neynoe* was brought to Town from *Deal*.

Stewart says, That he slept the second Night with *Neynoe*; That *Neynoe* had told him what he had said of the Bishop was false, and that Mr. *Walpole* had offer'd him a great Sum of Money, if he would swear to what he said, and turn Evidence; which he declar'd he could not do.

That Mr. *Walpole* had taken him into another Room before he was examin'd, and told him what Questions he would probably be asked, and what Answers he should give.

He says, that *Neynoe* told him also, That he had lik'd to have killed Mr. *Walpole*, and so put an End to the Plot; and that Mr. *Walpole* had given him a Paper of Directions, which he was to answer, in Order to be a Witness against the Protesting Lords.

As a Confirmation of his Testimony, *Stewart* says, He told this to Mr. *Gordon* before Mr. *Neynoe* was drown'd; and to Mr. *Kynaston*, before the Meeting of the Parliament.

Mr. *Gordon* confirms this Part of his Evidence, and declares, That he had heard it from *Stewart* before the Death of *Neynoe*. And Mr. *Kynaston*, a Gentleman of an undoubted Character, lately a Member of Parliament for *Shrewsbury*, has depos'd, That he was acquainted with *Stewart's* Account of *Neynoe*, before the Meeting of the Parliament; and adds this Circumstance, That when in the Appendix he saw those six Questions printed, he shew'd them to *Stewart*, who seem'd rejoiced,

joyced, and said, You see Sir what I told you is true.

Such concurring Testimonies from Persons kept so separate, and who are speaking against their own private Interest, must have the greatest Weight, and must, at least, prevent any rational and impartial Person from giving the least Credit to the bare Hearsay of this *Philip Neynoe*.

Mr. *Walpole* himself did not pretend to deny that *Neynoe* said these Things, only added other Circumstances to convince them of *Neynoe's* Villany; and says, that at the Time *Neynoe* was receiving Favours from him, he was thoroughly convinced he intended to cheat him; which was the Occasion of his being apprehended.

He own'd the Transactions between them, before *Neynoe* went to *France*, and particularly the Money mentioned by *Bingley*; which are Proofs that *Neynoe* must have disclosed these Secrets, since they could not come from Mr. *Walpole*; and he and *Neynoe* only were privy to it.

Mr. *Walpole* has shewn the foul Draught of the Questions mentioned by *Stewart*; and when he denies the Part of *Neynoe's* Declaration, relating to the Instructions given him before the Examinations, he owns he was twice alone with him, once the first Night of his being brought to Town, and the second Time when he gave him the Paper of Directions, which might be Foundation enough for *Neynoe* to frame so notorious a Falshood.

The Witnesses brought against Mr. *Bingley's* Character, seem'd to support it; for they all agreed they never heard any Thing against his Morality——He bore the Character of a *Jacobite* indeed, and had suffer'd for dispersing a Libel; but Judge *Gilbert*, before whom he was try'd, had acquainted him, That his private Life was not vilified, and neither Perjury or Forgery was laid to his Charge; and though the Punishment he suffer'd was the Pillory, yet it was the Crime, and not the Punishment that made the Ignominy, for which he appealed to the Judges.

To destroy Mr. *Skeene's* Evidence, they had produced one *Pancier*, who pretends *Skeene* revealed several Secrets to him relating to the Plot, particularly concerning a military Chest collected to carry on those Designs; tho' *Pancier* told him, he was a Friend to the present Administration; which seemed very improbable; but every one that heard these two Witnesses at the Bar, must remark the Steadiness with which Mr. *Skeene* denied these Affeверations of *Pancier's*; and the Confusion with which *Pancier* affirmed them--- They had also produced *Skeene's* Attainder for the *Preston* Rebellion; but there had been several Acts of Grace since, and nothing appeared against his Morals.

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In Order to shew that *Neynoe* could not possibly make those Confessions to *Skeene* and *Steward*, the Counsel for the Bill, had endeavoured to prove that the Prisoners were not together after the first Night: This indeed would have been material; but by the Proofs brought to support this Assertion, it appeared they frequently conversed together.

Mr. *Crawford* the Messenger, and his Mother, 'twas true, did swear, that to the best of their Knowledge the Prisoners never came together: But *Hannah Wright*, the Maid of the House, gave another Account of the Matter: *Francis Wood*, *Thomas Wood*, and Mr. *Russel*, severally deposed, that she declared to them she used to let the Prisoners converse together; That she used to stand upon the Stairs, and give Notice if any Body came, that they might retire into their several Rooms. And *Christian*, the other Maid, deposed, That *Hannah* gave the Key of *Neynoe's* Room to *Steward*, and several Times desir'd *Steward* to go up to him, and they were together an Hour or more.

Hannah also said, That she was turned away on Suspicion of having helped *Neynoe* to escape; and that there was a large Hole in *Neynoe's* Door, through which the Prisoners might converse; That *Neynoe* gave her a Paper, which she was to convey

vey for him ; but that it was taken out of her Bosom, and burnt by one of the Prisoners——
 And should more Credit be given to a Messenger and his Mother, who were swearing they did their Duty, or to the positive Oaths of *Skeene, Steward, Gordon, Kynaston, the Woods, Russel, Christian, and Hannah Wright* ? And their Lordships would take Notice, that *Crawford* confessed *Neynoe* had the Use of Paper, and found two Sheets missing ; and that *Hannah Wright* owned she had a Paper from him, that was burnt by one of the Prisoners ; and there was no Doubt but this was the Paper relating to Lord *Orrery*, mentioned by *Skeene* in his Evidence.

Then his Grace proceeded to sum up the Evidence, relating to the three Letters of the 20th of April, supposed to be written by Kelly, and dictated by the Bishop ; but the Duke not differing in his Account of it from the Bishop's Counsel, whose Observations have been taken Notice of already, it is omitted here.

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One Remark indeed of the Duke's I meet with, that I don't remember was made by any other Person, who spoke in Behalf of the Bishop ; which was, That whenever there was a Piece of Evidence objected to, the Counsel for the Bill constantly pretended they produced it to the Plot in general, because they knew it could not be admitted against the Bishop : But yet when they came to sum up, they apply'd it to this particular Case, which was not agreeable to that Candour that was necessary on such Occasions.

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And whereas it had been shewn, that the Bishop was so ill on the 20th of *April*, that he could not possibly dictate those Letters then ; to which the Counsel for the Bill reply'd, That they might be written on the 11th and 12th of that Month, when the Bishop and Mr. *Kelly* were both in Town ; or upon the 13th or 14th of *April* at *Bromley*, before his Lordship was so very ill : The Duke of *Wharton* makes this notable Remark, which demonstrates, that they could not be written either the 10th, 11th, 12th, 13th, or 14th of
April ;

April; namely, That the Earl of *Sunderland's* Death was mentioned in the Letter to *Chivers*, and that Noble Lord did not die till the 19th of *April*; at which Time it had been proved Mr. *Kelly* was not with the Bishop.

He observed further, That the Bishop of *St. Asaph*, did at first peremptorily contradict the Evidence of Mr. *Grant*, the Bishop of *Rochester's* Servant, by saying, he had received a Letter from the Bishop of *Rochester*, at the Time which *Grant* had sworn he was so ill of the Gout that he could not write——The Bishop positively affirmed, That he received this Letter on *Saturday* the 21st of *April* in the Morning, and saw *Grant* in *London* between Twelve and Two: But when it was proved that *Grant* did not leave *Bromley* till the Evening of that Day; and that another Person officiated for him as Butler in the Deanery, by Reason of his Absence; then the Bishop seemed to think himself under a Mistake, and allowed it might have been some Time before——His Grace said, he could have wished that Reverend Prelate had recollected himself more fully before he had given his Testimony, in a Matter of that Importance to one of his Brethren.

Having gone through the whole Evidence that had been brought to justify this extraordinary Proceeding, he said, he could not but observe the Steps that had been taken, to procure all possible Means to work the Destruction of this Great Man. Page 474.

His very Servants had been confin'd, though it did not appear they were guilty of the least Glimpse of Treason——*Lawson*, a Baker of *Bromley*, had been employed to examine the Bishop's Neighbourhood, in Order to find something that might have the Shadow of Proof: And had offer'd his Lordship's Coachman the Wages due to him, if he would go the Lengths that were required.

Mr. *Bingley* was threaten'd to be sent to *Newgate*, if he would not depose that the Letter of the 20th of *August* was Mr. *Kelly's* Hand.

Mr. *Kelly* himself was offer'd his own Terms by Mr. *Delafaye*, the Under-Secretary, if he would turn Evidence to destroy the Bishop of *Rochester*, or to speak in the Language mentioned at the Bar, *To pull down the Pride of this haughty Prelate.*

Mr. *Wearg* had objected to two of the Bishop's Servants Evidence, because they had Employments under him; but if these were not to be deem'd free Agents for that Reason, then must not the Evidence of those employed under the Government be admitted; and consequently all the Witnesses that had been brought to support the Bill, from the Decypherer to the Messenger, would be discredited, and the whole Prosecution must fall to the Ground.

It had been a Hardship on the Bishop that he was forced to prove a Negative; and the Difficulty was the greater, because *Kelly* was not permitted to be examin'd; for had he sworn what he so solemnly affirmed at the Bar of the House, they could not have had the least Debate.

The Bishop had desir'd of any Lord in the Administration, and even the Honourable Person, (Mr. *Walpole*) who appeared at their Bar, to declare, whether any one had charged him on their own Knowledge with any treasonable Practise; and it appeared they had not; and the whole Charge was supported on the slight Circumstances and improbable *Innuendo's* above mentioned.

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As to that Objection that had been rais'd of Mr. *Kelly's* making Resistance, and burning some of his Papers when he was seiz'd, he saw no Reason why this should affect the Bishop: He was to answer for his own Actions, and was like to suffer for them; besides, a Person of his Age might have Letters in his Custody he did not care should be seen, and yet of a different Nature from a treasonable Correspondence.

After this Evidence was consider'd, he could not think their Lordships would establish such a Precedent, as might be employed to the Ruin of the greatest amongst them. Was it of that
Conse-

Consequence to banish the Bishop of *Rochester*, in the Evening of his Days, who could, in his single Person, do no Prejudice to the Constitution? ----- If he was inclin'd to overturn it, as his Enemies suggested, he would be in a better Situation abroad than at home, to execute such a Design, by directing the Counsels of the disaffected: The Ruin of one Man, would not heal the Wound, which the Passing this Bill would make in the Constitution----- It had been said, the Bishop ought to have made Protestations of his Zeal for his Majesty and his Family; but he thought he took the readiest Way of performing his Duty, when he shew'd himself innocent; and if he had made Use of such Expressions, as he was blam'd for the Omission of, the same good Nature would have called it Hypocrisy; and those, who were displeas'd with his Silence, would have accused him of Insincerity.

Sir *Francis Goodier*, upon the Debate that happen'd in the House of Commons, on the Bill for banishing the Earl of *Clarendon*, declar'd as his Grace had done, *That he was not against the Proceeding, but was unsatisfied in doing it without Witness.* And another Great Man, on the same Occasion, said, *That if the Parliament set aside Law in that Case, they should be happy to see a Law, declaring the Power of Parliaments.*

That if this Bill pass'd into a Law, such Evidence would be established, and such a Method of Proceeding introduced, as would render all that was dear to them precarious; and if ever they should see a wicked Administration supported by a corrupt Majority in Parliament, this Step would be a sufficient Precedent to give a Colour of Justice to those who should be wanton in Tyranny.

That Reverend Prelate that spoke before him, had cited some Cases relating to Bills of Attainder; which, in his Grace's Opinion, differ'd very much from the present Question----- As the Attainder of Sir *John Fenwick*; where they only supplied the Want of a Witness, who had given his

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Evidence upon Oath before the Grand Jury, and had been spirited away by the Prisoner's Friends. But here their Lordships were to supply the Defect of Evidence, by condemning a Person upon improbable Conjectures: And he should take Leave to remind that Reverend Prelate of what had been formerly said on Acts of Attainder; That such Bills, like *Sisyphus's* Stone, had frequently rolled back upon the chief Promoters of them, which should restrain them from being too forward.

The Reason given for passing the Act for the Attainder of the Earl of *March*, was, because he had been instrumental in procuring the Attainder of another Lord, under Pretence of a Letter, which the Record said was no Evidence.

The Lord *Cromwel* was another known Instance of his Observation. He first advised those violent Proceedings in the Reign of *Henry VIII.* and the Advice he gave, to the Ruin of others, prov'd not long after fatal to himself. And his Grace concluded in the Words of *Sir Heneage Finch*, in the Case of the Earl of *Clarendon* — ‘ We
‘ have an Accusation upon Hearsay; and if it is
‘ not made good, *The blackest Scandal Hell can*
‘ *invent, lies at our Doors.*

To this Speech made by the Duke of *Wharton*, we will add another, that was publish'd some Months after the Trial, by the Title of

A Speech made by a Noble Peer, (Earl C-----r) in the House of Lords, upon the Third Reading of the Bill, For inflicting Pains and Penalties on Francis, Lord Bishop of Rochester.

My Lords,

THIS Debate has been already carried to that Length, and is by all agreed to be of such Importance, that I am sure your Lordships will permit me to enter into it without any Apology.

I am,

I am, my Lords, against this Bill, not only because I think nothing has been offer'd sufficient for the Support of it ; but because I think the Honour and Dignity of the Crown, the Dignity and Authority of this House, and the Credit and Reputation of the House of Commons, concern'd in the Event of it. My Lords, The Proceedings of that House have been, in this Case, very remarkable and uncommon : They voted the Bishop guilty of High Treason the very first Thing they did ; and it was reasonable to expect, that the Consequence of that Vote would have been an Order for an Impeachment in Parliament, or a Prosecution in the ordinary Course of Law. But, my Lords, we see they have taken another Method, and that without weighing what the Consequences might be. They have taken a Method, whereby they have made themselves both Judges and Accusers. They could not, as Judges, decently proceed against the Bishop, without hearing him, and therefore they gave him a Day for that Purpose, and thereby they discover'd the Dilemma into which they had run themselves. They found themselves oblig'd to hear him, and yet they could not acquit him, because they had already prejudg'd him. It is not therefore to be wonder'd that they have pass'd this Bill ; though, I believe, they would be very well pleas'd your Lordships should reject it, that the Knowledge of their having taken so wrong a Step, might the sooner be forgotten.

My Lords, a great deal has been said, and surely too much cannot be said, to shew that this Bill is an Infringement upon the Authority of this House. It becomes your Lordships to support your Dignity, and to shew a suitable Resentment, when the least of your Privileges is invaded. Your Lordships, upon this Occasion, would do well to follow the Example even of this very House of Commons : How contemptuously did they throw out a Bill lately sent them, because they thought it look'd like a Money-Bill ? And will your Lordships suffer them to share your Authority, to be-

come Judges equal with your selves, when there is no Necessity for it? In this Case, it is manifest, there can be no Necessity, because the Bishop is amenable to Justice: He has been confined several Months; he is now strictly guarded; and, no Doubt, the Zeal of the Governor will prevent his Running away. But, my Lords, if it could be supposed that this Bill did not affect your Lordship's Authority; yet if it affects the Honour of the Crown, I am sure, it will raise a becoming Indignation in us all against it. This Bill, if your Lordships pass it, will put his Majesty under the unavoidable Necessity of refusing the Royal Assent to it, or of condemning one of his Subjects, a Lord of Parliament, and a Bishop of that Church of which his Majesty is Guardian and Protector, in a Case at least doubtful; and that without hearing one Word, either of the Charge, or of the Defence. My Lords, It hath been often said, (I wish it were said without Grounds) that we have a disaffected Party amongst us. I am persuaded, it is far from the Intention of any Lord here, to advise his Majesty to do any Thing that might possibly increase that Disaffection: But whether the Passing of such a Bill against a Bishop of the Church of *England*, unheard, may not give a Handle to the Clamorous, to raise an Odium against his Majesty's Administration, is submitted to your Lordships. His Majesty's great Clemency and Mercy are known to all the World; and he has been in nothing more conspicuous, than in the Exercise of those Royal Virtues: Supposing, then, your Lordships should pass this Bill, how can you ever hope for the Royal Assent to it? These Objections, that concern the King, appear to me unanswerable, not only with Regard to this Bill, but to all Bills of Attainder in general. I think they ought never to be allow'd, but when the Offender flies from Justice, or is in open Rebellion; and then perhaps, the Notoriety of the Fact may be some Excuse for the Extraordinariness of the Proceeding.

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My Lords, I expected to have heard from that Reverend Bench, many Arguments of another Kind against this Bill, which are properly within their Sphere, and which I am sure they are perfect Masters of. The old Champions of our Church used to argue very learnedly, ' That to make or ' to degrade Bishops, was not the Business of the ' State ; That there is a spiritual Relation between a Bishop and his Flock, deriv'd from the ' Church, with which the State has nothing to ' do.' But this Bill deprives the Bishop of that spiritual Relation, without the Concurrence of the Church. The Parliament alone does it ; and it must be own'd, that if the Parliament can do it, they can as well make a new one in his Room ; and a Clause for that Purpose, added to this Bill, would as effectually do the one as the other. What the Thoughts of our Reverend Prelates are upon this Point, does not yet fully appear ; something of their Conduct intimates, as if our old Divines were mistaken : But be that as it will, as the Judgment of our Prelates will carry great Weight, and as the Reasons for such their Judgment, must needs be convincing, I do not doubt but they will give your Lordships full Satisfaction, before this Debate comes to a Period. In the mean Time I speak my Concern, that if Acts of Parliament are made to interfere with Church Affairs ; if Bishops are to be put in or turn'd out at Pleasure ; and all this to be done without the Concurrence of the Church, the World abroad may, though unjustly, look upon our Church as a Creature only of the State, and treat our Bishops, as if they were no more than State Officers. I hope, however, from the Courage, Zeal, and Conduct of our present Reverend Prelates, whatsoever becomes of this Bill, that they will be able to wipe off any such Scandal : They certainly have the Honour, the Dignity, and Authority of our Church always at Heart, and every Thing tending to her Interest, they will most zealously promote. But whether the Passing of this Bill will promote her Interest, or be of any Service to her, they best know : For

my Part, I cannot even guess at any Advantage she possibly can receive by it, unless it be this, That it will make the Bishoprick of *Rocheſter*, and the Deanery of *Westminſter* to become vacant.

My Lords, This Bill carries in the Frame of it, an invincible Objection to it ; for the Preamble and the enacting Part, the Crime and the Punishment, bear no Proportion to each other. The Preamble contains a Charge of High Treason against the Bishop ; and pray my Lords, Why should he not be punish'd accordingly ? Is it because he is a Bishop of the Church of *England*, or a Lord of Parliament, or in high Favour with the King or his Ministers ? I have not heard that the Bishop hath been at Court of late ; but be it either of these, it will be so far from being a Reason for mitigating his Punishment, that it ought, if possible, to increase it. My Lords, our Laws have wisely taught us to have a just Abhorrence of High Treason, and have ordain'd for it the severest Punishment that *English* Clemency will admit of ; and shall he, who has been voted the principal Contriver and Director of this most horrid and detestable Treason, escape with a Punishment less than his Crimes deserve, and that too, in full Parliament ? Methinks, if it were necessary, that the Legislature should interpose in this Case, the Heinousness of the Offence should fire their Resentment ; and instead of abating the Punishment, should put them upon heightening it with all the Circumstances of Severity, that their Wisdom could contrive. As in the Case of the late *South-Sea* Directors. No one will say, but that they might have been punish'd as Cheats, without the Help of an Act of Parliament ; but as the Punishment ordain'd by our Laws, for such Offences, came not up to the aggravating Circumstances of their Guilt, a Law was made to punish them on Purpose ; and they were very justly stripp'd of their Estates, who had before so notoriously cheated, bubbld, and beggar'd the whole Nation. What Reason then can be given, why the Bishop should

should not be punish'd, at least, equal with others, in Cases of High Treason? Why truly, the Want of legal Evidence, is the only Reason pretended: A Reason! in my Apprehension, so very mean and trifling, that it ought not to have been heard in the Supreme Judicature of a Nation, without the severest Censure, and such as would well become your Lordships to treat with the utmost Indignation and Contempt.

For, my Lords, Is it come to this at last, that after so much Grimace, so much Noise and Stir, after Committing the Bishop for High Treason, after Voting him a Traitor, and Treating him as such, must it at length come out, that there is no legal Evidence against him! To palliate the Matter a little, a Distinction is endeavour'd to be made between legal Evidence and real Evidence, or between such Evidence as our Law requires, and such as in natural Justice and Equity ought to be admitted. But, my Lords, this is a Distinction entirely without a Difference; for what is Evidence of a Fact before any Judicature whatsoever, but such Testimony as the Nature of the Case requires, to induce a moral Certainty of the Truth of the Thing testify'd: The greater or less Consequence the Case is of, the more or less Proof is requir'd to induce such Certainty. Thus in ordinary Matters, barely to prove a Hand-writing is held sufficient Evidence; because in such Cases, it is not to be suppos'd, the Hand-writing should be counterfeited: In other Cases, seeing the Party write, is necessary to be prov'd; and still as the Weight of the Case increases, stronger Proof is requir'd. Ever since the Reversal of the Attainder of Colonel *Algernoon Sidney*, the proving of Treason, by the proving of Hand-writing, hath been with great Justice condemn'd; and why, I pray? But because there can be no Hand-writing but what will admit of a Counterfeit; and nothing that is capable of being counterfeited, carries with it such a Degree of Certainty, as is necessary where a Man's Life and Fortune is concern'd. My Lords, legal Evidence is nothing else but such real
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and certain Proof, as ought in natural Justice and Equity, to be receiv'd; and therefore the Oath of one credible Witness, being certain and sufficient to induce a Belief of the Thing he swears, is legal Evidence; and yet so tender is our Law, so great a Degree of Certainty doth it require, that as it now stands, two positive Witnesses are requir'd to convict a Man of High Treason. This however, hath been preposterously enough urg'd, to shew a Difference between legal and real Evidence; and Sir John Fenwick's Case hath been cited for the same Purpose. But this, with Submission, shews no Difference at all; for will any one say, that one credible Witness is not legal Evidence? Can any Court in the Kingdom, upon a Trial of High Treason, refuse to hear such Evidence? And is not such Evidence sufficient too in all Cases, where some positive Law, for the greater Certainty, doth not require more?

One of the learned Gentlemen at the Bar, (I suppose, out of pure Zeal for the Bill, and not with a Design to misguide his Audience) did roundly affirm before your Lordships, that no Evidence, strictly speaking, was legal, but what was *Mathematical*. I am confident, that Gentleman would not have given this as his Opinion, under his Hand at his Chamber, because he knows it is directly contrary to Truth: He knows very well, that no Offender, that puts himself upon his Trial, can be convicted, but upon the Oath of one or more Witnesses; he dares not deny, but that such Conviction is founded upon legal Evidence, strictly so speaking; and no one will pretend to say, that any Evidence of Witnesses can be call'd *Mathematical*. But the Gentleman goes on, and says, that the Evidence for this Bill is legal, in the general Sense of the Word: On the contrary, I beg Leave to affirm, that it is not legal in any Sense whatsoever. No Act of Parliament hath made it legal, nor can it in natural Justice and Equity, be call'd so, for Want of sufficient Certainty; and indeed, it hath been admitted throughout this Debate, and even by the Counsel who spoke first
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for this Bill, that it is not supported by legal Evidence. But this Gentleman was pleas'd to go still further; for he affirm'd before your Lordships, that Depositions taken in Writing, were not Evidence in any Court of Law. My Lords, it is Pity that in so *fine a Speech*, there should be so much *false Doctrine*: It is very true, that the Law doth require the best Evidence that the Nature of the Case will admit of; and therefore will not suffer the Depositions of a Witness in Writing to be read, where such Witness can be examin'd *viva voce*: But that Gentleman could not but know, that where such living Witness is not to be had, his Depositions in Writing are never refus'd, nor any other Evidence, that in natural Justice and Equity, can tend to discover the Truth of the Fact in Question with Certainty.

My Lords, the Wisdom and Goodness of our Law appear in nothing more remarkably, than in the Perspicuity, Certainty, and Clearness of the Evidence it requires, to fix a Crime upon any Man, whereby his Life, his Liberty, or his Property may be concern'd: Herein we glory and pride ourselves, and are justly the Envy of all our neighbour Nations. Our Law in such Cases, requires Evidence so clear and convincing, that every By-stander, the Instant he hears it, must be fully satisfy'd of the Truth of it: It admits of no Surmises, *Innuendoes*, forc'd Consequences, or harsh Constructions, nor any Thing else to be offer'd as Evidence, but what is real and substantial according to the Rules of natural Justice and Equity.

These are the Rules the Judges go by, nor have they any other in determining what is, or what is not to be admitted as Evidence before them; and therefore to say, that the Law refuses such Evidence as is real, and ought in natural Justice and Equity to be admitted, is to cast an Imputation upon the Law; which is not only unjust, but entirely groundless. My Lords, I think sufficient hath been said, to shew the Mistake of those noble Lords who have endeavour'd to distinguish between legal and real Evidence. The Distinctions
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that have been made, and the Instances that have been produc'd, shew only, what legal Evidence is sufficient for Conviction, and what not; and if that were the Question now before your Lordships, it would deserve another Consideration.

The present Question is, Whether any Evidence at all has been offer'd to your Lordships to fix Treason upon the Bishop of *Rocheſter*? And for my Part, my Lords, I am clearly of Opinion, that you have had no ſuch Evidence: It is on all Hands agreed, that no legal Evidence of Treason has been offer'd againſt him; and I hope I have ſufficiently ſatisfy'd your Lordships, that if it be not legal Evidence, it is not real Evidence, or ſuch as in natural Juſtice and Equity ought to be admitted, and conſequently, no Evidence at all. My Lords, the Counſel for the Bill have non attempted to prove poſitively againſt the Biſhop any one ſingle criminal Act: The Circumſtances that they have offer'd, are, in my Opinion, ſo far from affecting him, that they carry in them no Appearance of Guilt in him whatſoever. If indeed, there had been any one poſitive Witneſs againſt him, your Lordships, perhaps (as was done in Sir *John Fenwick's* Caſe) might, with ſome Appearance of Reaſon, have admitted Circumſtances in Support of ſuch Witneſs, rather than a Man of the Biſhop's Rank and Character ſhould go unpuniſh'd; and indeed, I think, no Man's Cunning ought to be a Protection for his Villany; and I hope, and do not doubt, but all Traitors will, one Time or other, meet with their juſt Rewards. But, my Lords, in the Caſe before you, the whole Charge is built upon Circumſtances, and theſe are ſaid to be ſupported by other Circumſtances; but all of them are ſo remote, ſo general, and I may ſay, ſo inoffenſive, that they might ſuit any Lord here, as well as the Biſhop; for there is not one ſingle Circumſtance of them all, ſuch as in its Nature would be admitted as Evidence of any Crime againſt any Man in any Court in the Kingdom.

To come, my Lords, to Particulars. The Treason charg'd upon the Bishop is, That he dictated *Kelly* to write the three Letters dated the 20th of *April*, 1722, sign'd *Jones*, *Illington*, and 1378. And in Maintenance of this Charge, 'tis said, that these three Letters were of the same Hand-writing with another Letter produc'd before your Lordships, and dated the 20th of *August* following. That from the 20th of *April* to the 20th of *August*, Letters were continually sent abroad in the same Hand-writing; That these Letters contain'd a treasonable Correspondence; That they are the Hand-writing of *Kelly*; That *Kelly* had been with the Bishop two or three Times within these two or three Years past; That there are Circumstances in the Case of *Jones* in this Correspondence, that suit with the Case of *Illington*; and Circumstances in the Case of both, that suit with the Bishop. These are the Facts that are the main Foundation upon which the Bishop's heavy Charge is built; and surely it well behoves your Lordships to consider seriously how they are prov'd, and in what Manner, and with what Degree of Certainty they affect him.

The three Letters taken simply, carry no Treason in them; they have not yet been decypher'd into Treason; and were it not for a Name in the Direction of one of them, which is said to be a cant Name of the Pretender's, they probably might have pass'd as harmless undesigning Letters: Will your Lordships therefore suppose, that the Writer directed his Letter to the Pretender by the cant Name of *Jackson*, when yet it does not appear that he ever knew the Pretender had such a cant Name? Ought we not rather to suppose in Favour of Innocence, that the Letter was not intended for the Pretender, but for one whose real Name it bears? These cant Names, and the Art of the Decyphers, have been the Means made Use of to make this Correspondence treasonable; but will it not be thought hard that a Man must be conjur'd into Treason by a Magick Art, that none of us understand, and by a Parcel of Names, that the
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wisest of us are not yet able to discover whether they were design'd for cant Names, or for real ones? To make the Matter clearer, the Clerks of the Post-Office are call'd, and they prove, that the several Letters, produc'd before your Lordships, are true Copies of original Letters sent abroad as directed; which Originals, according to the best of their Judgment and Belief, are the same Hand-writing with the Letter of the 20th of *August* above-mention'd. This Judgment and Belief of theirs is founded without comparing any Two of those Originals together, or without pretending to say whose Hand-writing they are, or to whom they belong. My Lords, I have already observ'd, that the Proving of a Hand-writing is at best but Evidence too precarious and uncertain to make good a Charge of so weighty a Nature as this in Judgment before you; but I cannot help taking Notice, that the Proof of these Letters, so as to make them treasonable, is still more precarious, more uncertain and slippery, than any Thing of the Kind I ever met with. The usual Way to prove a Hand-writing, so as to fix a Charge upon the Writer, is, for the Witness to swear, that he hath frequently seen the Party write, or that he hath corresponded with him, and receiv'd several Letters from him, and therefore is very well acquainted with his usual Character and Way of Writing; and then the Writing it self is produc'd, the Witness swears to it, and the Import of it is discover'd by every By-stander. But here, these Post-Office Clerks are forc'd to call in Aid a Messenger and a Servant, to fix the Hand-writing of the Letters they produce; the Letters themselves are unintelligible, and therefore the Assistance of the Decyphers, and some cant Names must be added, before they can wire-draw Treason out of them. My Lords, these Decyphers refuse to give your Lordships any Reason for the Construction they have made; they shelter themselves, by saying, that to give you a Reason, would be to discover their Art; happy Art indeed, that shall enable the Artist to swear a Man into High Treason,

son, and yet it shall not be in the Power of the accus'd Person to disprove him ! I do not find that these Gentlemen pretend to act by unerring Rules ; they themselves own they may be mistaken ; and therefore until your Lordships are let further into their Secret, you will judicially look upon the Art of Decyphering to be no more than the Art of Guessing, and esteem him that guesses best, to be the best Decypherer.

The Messenger and Servant that have been called, to finish the doubtful Evidence of this Hand-writing, and to fix it upon *Kelly*, are far from giving your Lordships such an Account of it, as can induce you to believe they are sufficiently acquainted with it ; they do not pretend to say, that they have been frequently accustomed to see or observe him write, or that they ever receiv'd any Letters from him, or ever were privy to any of his Correspondences ; these Things, one would have thought, might easily have been proved against a Man of *Kelly's* great Dealing and Acquaintance, in as full and clear a Manner, as the Nature of the Thing would admit of. Your Lordships then are pleased to observe, that the Evidence offered to prove this Hand-writing, so as to make it criminal, consists of three distinct Branches, supported by three different Sets of Witnesses ; and that each of these three several Sets have given a very lame, doubtful and obscure Evidence ; but if their Evidence had been ever so full and positive, yet I must beg Leave to insist, that it is such as is in its Nature dubious and uncertain, and therefore in a Case of this Consequence, ought not to be rely'd on. This will appear still the Plainer from the different Opinions observable among the different Witnesses, insomuch that I may well venture to say, your Lordships are as yet at a Loss by whom these Letters were wrote ; but if you will have any Regard to Numbers, and to the Nature and Circumstances of the Testimony given by those Numbers, the Evidence is much stronger, and more clear and convincing, that they were not wrote

wrote by *Kelly*, than that they were; and if they were not wrote by him, it will become your Lordships to consider carefully what you are a doing; for then the Foundation of this Bill will be sapp'd, and of Course the whole Fabrick must fall to the Ground.

But, my Lords, supposing these Letters were really the Hand-writing of *Kelly*, that they were of that treasonable Signification that the Decyphers contend for, and that the Names mention'd in them, did not belong to real Persons, but were cant Names to denote the Pretender and his Agents; I say, my Lords, supposing all this true of *Kelly*, how will it affect the Bishop? Might not *Kelly* write these Letters, and carry on this Correspondence without the Bishop's Direction? Must the Bishop answer for *Kelly's* Crimes, because *Kelly* happens to be a Nonjuror? Or because he was employ'd to buy Gloves and Stockings for the Bishop; must your Lordships therefore infer, that he was employ'd to write Treason for him? Suppose *Kelly* had actually liv'd in the Bishop's Family, as his Secretary; have we not seen, not many Years since, even a Jesuit a Bishop's Domestick, without Offence? Give me Leave, my Lords, to carry this Point a little further: Has any Thing been offer'd to induce your Lordships to believe, that *Kelly* saw the Bishop, or heard from him for several Months before this Correspondence began? Has any one Word been said or Hint given, either from cant Names, or decypher'd Letters, or any otherwise howsoever, tending to that Purpose? Nay, my Lords, Have not you had as much Evidence as the Nature of the Thing is capable of, that the Bishop could not dictate, nor *Kelly* write, those Letters, at any Time near the Time of their Date? And if they were dictated by the Bishop, it must be about that Time, because the Circumstances mention'd in the Letter, would not suit him at any other Time. And here, my Lords, it is proper to observe, that the Managers for the Bill, when they

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were to apply the Circumstances of *Jones* and *Illington*, in the Letters, to the Bishop's Case, they built the Whole of their Arguments upon the Date of those Letters; but when they saw that the Bishop had fully prov'd that it was impossible he could dictate them at that Time, why then truly, they vary their Charge, and say, that it was not his dictating the Letters at that Time, but his dictating the Letters of that Date, that they contended for; and they tax the Bishop with a partial and a fallacious Defence, for applying it to the Time, and not to the Fact. But I think, with great Submission, that the Bishop has made a very just Defence: I think, he could not have made a better; and under the Disadvantage of proving a Negative, I think it was almost impossible he should have made one so good. For your Lordships well remember, he was charg'd as the Author of the Letters sign'd *Jones* and *Illington*, because he was under the Circumstances of *Jones* and *Illington*, at the Time of the Date of those Letters: But the Bishop hath fully prov'd, that he could not be the Author of them at that Time; and if he were not at that Time, he could not be so at any other Time; for take away the Date of those Letters, and the Relation between *Jones* and *Illington* and the Bishop, you must of Course take away likewise. But then, as your Lordships are as yet at a Loss when, or by whom these Letters were either dictated or wrote, shall the Tallying of a few Circumstances in them with the Bishop's Case, supposing them to be wrote about the Time of their Date, make him guilty of High Treason; especially when his Counsel have shew'd us, from the Letters themselves, as many Instances wherein they differ'd? Must Mrs. *Jones* and the Bishop's Lady signify the same Person, because they dy'd about the same Time? Or must Mrs. *Jones* and Mrs. *Illington* signify the same Person, because by a Letter wrote, no one knows by whom, or when, Mention is made of the Death of one Mrs. *Jones*, and another Letter condoles the Death of one Mrs. *Illington*? Or is the

Bishop guilty of High Treason, because he is suppos'd to be meant by *Jones* or *Illington*? when yet, through the whole Correspondence, there is no Treason committed either by *Jones* or *Illington*? But admitting, that all the Circumstances that have been produc'd against the Bishop, hit him so exactly, that it was morally impossible they could mean any Body else; yet still, my Lords, what has the Bishop to do with it? Might he not be thus describ'd, and thus spoke of, and yet know nothing at all of the Matter? And if he is thus to suffer for what another Man may have said of him, I am sure he is the first, and I hope he will be the last, that ever will be distinguished in so extraordinary a Manner. The Sum then of all the Circumstances that have been offer'd as Evidence against the Bishop, amounts to this: Here have been a Parcel of cant Names produc'd and made Use of against him, which, for ought appears, he never heard of. Here have been Letters produc'd and read against him, wrote in Cyphers, and of a Hand-writing not pretended to be the Bishop's, and of which your Lordships have as yet had no Manner of Certainty. A Construction hath been put upon these Letters, which, in several Circumstances, hit the Bishop, and in several other, miss him: But amongst all these Circumstances, there is not the least Hint of any Word said, or Act done by him, relating to this Conspiracy, from first to last; nor doth it appear, that he was ever privy to it, or so much as heard of it, 'till it was known to all the World. And yet, my Lords, these, and such as these, are the Circumstances whereby the Bishop is to be *guessed into High Treason*; but I hope your Lordships will be very cautious how you make Precedents of such wretched *Guess-work*. The celebrated Letter of *Dubois*, now before you, is a notable Proof of the Necessity of such Caution; for we see the grand Promoters of this Bill, cannot agree in their Construction, or they have at least chang'd their Opinions about that famous Letter.

The Uncertainty of this Way of Gueffing, puts me in Mind of some remarkable Circumstances relating to the renown'd Mr. *Neynoe*, which I had like to have forgotten, and which, though they seem to be under the Misfortune of being slighted here, do yet in the Report of the Committee of the House of Commons make a very considerable Figure. Those Circumstances of *Neynoe* in that Report, appear to be not only the Foundation of the Charge against *Kelly* and the Bishop, but even the Foundation of the Plot it self; and the Art and Management with which they are there dress'd up, do well deserve your Lordship's Attention. It seems, my Lords, this worthy Man had been examin'd four several Times; his Examinations were taken in Writing, and contain'd an historical Account of the Carrying on of this Conspiracy. The learned Committee, at the same Time they would represent him as a vile and infamous Fellow, and would be thought to look upon his Examinations as insufficient, do yet open their Scene with this very Account, and build entirely upon it. But, would any one believe, that *Neynoe* has never sworn to, or so much as sign'd, any one of these Examinations? Can any Body think that he was not requir'd to do one or both? Does not every Body know, that they would otherwise be of no Use? May we not therefore reasonably suppose, that he refus'd to do either the one or the other? And can any Reason be given for such Refusal, but that they were not true?

My Lords, the Committee were well aware, that great Objections would be made to this Kind of Evidence, and therefore they have added to it some circumstantial Hearsays, which they call the corroborating and concurrent Proofs of *Neynoe's* Testimony. But pray, my Lords, what are these corroborating and concurrent Proofs? Why they are of this Kind, one Man heard another Man say, that a third Man was concern'd in this Conspiracy. Behold then, the Sum of the Argument:

Neynoe's Examination is admitted of itself to signify nothing; the same likewise cannot be deny'd of *Pancier's* Hearsay: But however, both these Nothings make up something to prove the Plot, because they are the corroborating and concurrent Proofs of each other. And thus the learned Committee have so contriv'd it, that they have made these Examinations of *Neynoe* to be of more Use, and to serve their Purpose better, than if *Neynoe* himself had been now living, and produc'd before your Lordships; and therefore it looks as if it were prophetically known, that the Man intended to hurl himself out of the World with a Winding-Sheet. But however that be, it is Matter of Surprise, that these Examinations, which the Committee treated so respectfully, should now by the Counsel be so slighted, that they have scarce mention'd them, but as if they were asham'd of them; and yet they are as good Evidence as any that have been offer'd in Favour of the Bill now before your Lordships.

But, my Lords, in the Course of this Debate, it hath been warmly urged, that though there be not legal Evidence against the Bishop, yet that all the Circumstances that have been offer'd against him, are sufficient to convince any Man in his private Judgment, that the Bishop is guilty. Nay, it hath been said, that these Circumstances put together, are stronger and more convincing, than any positive Evidence whatsoever; and therefore that no one can doubt of the Bishop's Guilt, though some, out of Compassion or good Nature, might be induc'd to vote in his Favour. How strong and convincing, or rather how impertinent and trifling these Circumstances are, I have already observ'd to your Lordships; and I must say, it was not without a good Deal of Concern, that I heard *That* urg'd as the Result of Judgment, which could have no other Foundation than in Opinion only. But, my Lords, this is not the first Instance wherein I have observed Judgment and Opinion to be confounded and mistaken the one for

for the other, and that too, in a very gross and dangerous Manner. My Lords, Mens Opinions, generally speaking, are nothing else but their Fancies or Imaginations, and are usually grounded upon personal Pique, or Party-prejudice. These are weak and slender Foundations, and have nothing to do, and I hope, in *England*, never will have any Thing to do, where a Man's Life, his Liberty, or his Property is concern'd. But, my Lords, a Man forms his Judgment according to the Evidence that is offer'd him, that alone is his Rule; and as the Perspicuity or Uncertainty of that appears, Justice requires a Determination accordingly: The Compliment therefore upon the noble Lords that have appear'd against this Bill (if it was intended as a Compliment) carries a very severe Sting in the Tail of it, as it supposes those noble Lords to be possibly capable of giving an unjust Judgment. My Lords, the Earl of *Strafford* lost his Head for accumulative Treason. A great many Facts were laid to his Charge, and though it was agreed on all Hands, that none of them singly amounted to Treason, yet it was insisted on, that all of them put together, shew'd an Intention in him to subvert the Government, and therefore that he was a Traitor. The Torrent of those Times taught Men to argue, that though the Charge against the Earl did not contain legal Treason, yet it was morally impossible that he could commit the Crimes contain'd in that Charge, and not intend the Destruction of the State; that the Facts by him done, shew'd him more a Traitor than any positive Act of Treason could do; and that if Men were satisfy'd in their private Opinions, that the Earl was, in the Main, guilty of Treason, he ought to suffer accordingly. My Lords, this was the Reasoning of those Days; a Reasoning, which, I hope, your Lordships will neither imitate nor encourage, because it was the Foundation of those Proceedings against that Great Earl, which were soon after in full Parliament so justly branded; and if future Parliaments

should not be able to discover any Difference between the Inconveniences arising from accumulative Evidence, and accumulative Treason, May they not with great Justice censure us, by condemning the One equally with the other? That which was then call'd accumulative Treason, was afterwards adjudg'd to be no Treason, and I hope, your Lordships will yet adjudge this accumulative Evidence to be no Evidence: I am sure you will not punish a Man in the severest Manner, until you have had some Reason given you, why you should punish him at all. You will not first believe a Man a Criminal without Proof, and then admit a criminal Construction to be forc'd upon every innocent Action, only to support such Belief. You will not adjudge a Man guilty of the highest Crime against the Law, when his Prosecutors themselves own, they cannot make good any one Branch of their Charge according to Law.

The Bishop's Case must be own'd to be very hard, and the Evidence against him very weak, when his own Letter to his Son, and the Letter to *Dubois* are put to the Torture to help out the Charge against him. As for the Letter to *Dubois*, it is amazing to consider that such Pains should be taken from a Similitude of a broken Impression on Wax with a whole one, and a Similitude of two little *e*'s, to fix it upon the Bishop; which, when fix'd, can serve to no Purpose at all against him; for that Letter hath neither Date, Subscription, Cypher, nor cant Name in it; and for ought appears, may have been wrote before the Man was born whom they would mean by *Johnson* therein nam'd. Nothing treasonable is pretended to be guess'd out of it, nor, for ought appears, was it ever seen by any one besides the Writer; and yet because it is there said, that the Writer wrote something, (no one knows what, or when, or to whom) in the Hand of one Mr. *Johnson*, your Lordships are perswaded to infer, in Opposition to the positive Evidence of all the Bishop's

shop's Family, that *Kelly* was an Intimate of the Bishop's, and employ'd to write his Treasons. The Use that is made of the Bishop's Letter taken from his Servant, is still more extraordinary. I have indeed, too often observ'd doubtful Actions, by the Help of bold *Innuendoes* constru'd criminally; but to give that in Evidence which was neither said nor done, to *innuendo* Silence itself into High Treason, is entirely new, and the learned Counsel deserve the Glory of the Discovery. But the Bishop's Case will still appear the Harder, when it is consider'd, that such Stress hath been laid upon such remote and distant Circumstances in Favour of this Bill, and at the same Time your Lordships were not pleas'd to receive on the Bishop's Behalf legal Evidence, real Evidence, and such as in natural Justice and Equity, ought to have been admitted.

The Bill that hath lately passed both Houses against *Kelly*, doth not hinder him from being still a Witness; for it hath not yet had the Royal Assent, and perhaps never may; but if it had, there is, as I apprehend, nothing in that Bill, that will take away his Testimony in any Court in the Kingdom. But be that as it will, I must beg Leave to insist, that he is at present a good Witness, and, as every Body is satisfied, that it was in his Power to clear up this whole Affair. Who knows what the Awe of an Oath might have extorted from him? He appears to be a Man under the Influence of Conscience; for his refusing the Oaths to the Government, and thereby suffering his Subsistence to be taken from him, is a manifest Proof of it. If therefore your Lordships had permitted *Kelly* to be produced when the Bishop call'd for him, something probably might have been discover'd to have ascertained either the Bishop's Guilt or his Innocence. But as his Case now stands, the Evidence of his Guilt appears very dark, and, for ought I can observe, is like to continue so. My Lords, I have now done; and if upon this Occasion, I have tired your Patience, or discover'd a Warmth unbecoming

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Proceedings against Bishop Atterbury, &c.

coming me, your Lordships will impute it to the Concern I am under, lest, if this Bill should pass, it should become a dangerous Precedent for After-Ages. My Zeal, as an *Englishman*, for the Good of my Country, obliges me to set my Face against Oppression in every Shape; and where-ever I think I meet with it (it matters not whether one Man or Five hundred be the Oppressors) I shall be sure to oppose it with all my Might: For vain will be the Boast of the Excellency of our Constitution; in vain shall we talk of our Liberty and Property secur'd to us by Laws, if a Precedent shall be establish'd to strip us of both, where both Law and Evidence are confessedly wanting. My Lords, upon the whole Matter, I take this Bill to be derogatory to the Dignity of the Parliament in general, and to the Dignity of this House in particular: I take the Pains and Penalties in it to be much greater, or much less, than the Bishop deserves; I take every individual Branch of the Charge against him to be unsupported by any Evidence whatsoever. I think there are no Grounds for any Opinion of the Bishop's Guilt, but what arise from private Prejudice only; I think, private Prejudice has nothing to do with judicial Proceedings; I am therefore for throwing out this Bill.

The Debates, which lasted some Time, being ended, the Bill pass'd by a great Majority, and afterwards receiv'd the Royal Assent, a Copy whereof follows:

An ACT to inflict Pains and Penalties on
 FRANCIS, Lord Bishop of ROCHESTER.

Page 476.

WHereas in the Years 1721 and 1722, a detestable and horrid Conspiracy was form'd and carry'd on by divers Traitors, for invading your Majesty's Kingdoms with foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the *Tower* and City of *London*, and for laying violent Hands upon your Majesty's most sacred Person, and upon his Royal Highness

Highness the Prince of *Wales*, in Order to subvert our present happy Establishment in Church and State, by placing a Popish Pretender on your Throne: And whereas, for the better Concealing and Effecting the said Conspiracy, divers treasonable Correspondences were within the Time aforesaid, carry'd on by Letters written in Cyphers, cant Words, and fictitious Names; which Conspiracy, had it not been disappointed by the Goodness of Almighty God, would have depriv'd your Majesty's Kingdoms of the Enjoyment of their Religion, Laws and Liberties, involv'd them in Blood and Ruin, and subjected your People to the Bondage and Oppression of Romish Superstition and Arbitrary Power: For which execrable Treason *Christopher Layer* hath been indicted, tried, convicted and attainted. And whereas *Francis* Lord Bishop of *Rocheſter*, notwithstanding the many solemn Assurances by him given of his Faith and Allegiance to your Majesty, by taking the Oaths by Law appointed to be taken, instead of the Oaths of Allegiance and Supremacy; which Oaths he had likewise taken at sundry Times, during the respective Reigns of their late Majesties King *William* and Queen *Mary*, and of her late Majesty Queen *Anne*; and notwithstanding he had frequently abjur'd the Pretender; hath in direct Violation of his said repeated Oaths and Obligations, and to the great Scandal of Religion and his Holy Function, been deeply concern'd in forming, directing, and carrying on the said wicked and detestable Conspiracy, and hath been a principal Actor therein, by traiterously consulting and corresponding with divers Persons, to raise an Insurrection and Rebellion against your Majesty within this Kingdom, and to procure a foreign Force to invade the same, in Order to depose your Majesty, and place the Pretender on your Throne, and by traiterously corresponding with the said Pretender, and Persons employed by him, knowing them to be so employed. Therefore to manifest our just Abhorrence of so wicked and abominable a Conspiracy, and our Zeal and tender Regard

gard for the Preservation of your Majesty's Person and Government, and of the Protestant Succession in your Majesty's Royal Family, the solid Foundations of our present Happiness and future Hopes, and to the End that no Conspirator may by any subtil Contrivance or Practice whatsoever escape Punishment; and that all others may, by the Justice of Parliament, be for ever hereafter deterr'd from engaging in any traiterous Conspiracies or Attempts: We your Majesty's most dutiful and loyal Subjects the Lords Spiritual and Temporal and Commons in Parliament assembled, do humbly beseech your Majesty that it may be enacted: And be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by the Authority of the same, That the said *Francis* Lord Bishop of *Rocheſter*, from and after the 1st Day of *June*, in the Year of our Lord 1723, shall be and is hereby to all Intents and Purposes, depriv'd of all and ſingular his Offices, Dignities, Promotions and Benefices Eccleſiaſtical whatſoever; and that the ſame, and every of them, ſhall from thenceforth be actually void, as if he were naturally dead; and that the ſaid *Francis* Lord Bishop of *Rocheſter*, ſhall from thenceforth for ever be diſabled and render'd incapable of, and from taking, holding, or enjoying any Office, Dignity, Promotion, Benefice or Employment within this Realm, or any other his Majesty's Dominions; and alſo of and from uſing or exerciſing any Office, Function, Authority or Power, Eccleſiaſtical or Spiritual whatſoever; and ſhall and do ſuffer perpetual Exile, and be for ever baniſh'd this Realm, and all other his Majesty's Dominions, and ſhall depart out of the ſame, on or before the five and twentieth Day of *June*, in the Year of our Lord 1723. And that if the ſaid *Francis* Lord Bishop of *Rocheſter* ſhall return into, or be found within this Realm, or any other his Majesty's Dominions, at any Time after the ſaid Twenty-fifth Day of *June* 1723, he the ſaid *Francis* Lord Bishop of *Rocheſter*

chester, being thereof lawfully convicted, shall be adjudged guilty of Felony, and shall suffer and forfeit, as in Cases of Felony, without Benefit of Clergy, and shall be utterly incapable of any Pardon from his Majesty, his Heirs or Successors. Page 477.

And be it further enacted by the Authority aforesaid, That all and every the Person and Persons, who shall from and after the said 25th Day of *June*, in the Year of our Lord 1723, be aiding or assisting to the Return of the said *Francis* Lord Bishop of *Rocheſter* into this Realm, or any other of his Majesty's Dominions, or shall harbour or conceal him within the same, or any of them, being thereof lawfully convicted, shall be adjudged guilty of Felony, without Benefit of Clergy.

And be it further enacted by the Authority aforesaid, That if any of the Subjects of his Majesty, his Heirs or Successors, except such Persons as shall be licensed for that Purpose, by his Majesty, his Heirs or Successors, under his or their Sign Manual, shall from and after the said 25th Day of *June*, in the Year of our Lord 1723, within this Realm or without, hold, entertain, or keep an Intelligence or Correspondence, in Person, or by Letters, Messages, or otherwise, with the said *Francis* Lord Bishop of *Rocheſter*, or with any Person or Persons employ'd by him, knowing such Person or Persons to be so employ'd, such Person so offending, being thereof lawfully convicted, shall be adjudged guilty of Felony, and shall suffer and forfeit, as in Cases of Felony, without Benefit of Clergy.

And be it further enacted, That if any Offence against this Act shall be committed out of this Realm, the same shall or may be alledg'd, laid, enquir'd of, and try'd in any County within *Great Britain*.

In Purſuance of this on *Tuesday* the 18th Day of *June*, the deprived Bishop of *Rocheſter*, accompany'd by his Son-in-Law, Mr. *Morice* and his Wife, embark'd on Board the *Aldborough*, one of his Majesty's Ships of War; and on *Friday* the 21st landed at *Calais*.

The

*The TRIAL of THOMAS Earl of
MACCLESFIELD, begun in the House
of Lords, Thursday, May 6, 1725.
10 Geo. I.*

Proceedings a-
gainst the Earl
of Macclesfield.

Page 1.

Lord Chief Ju-
stice *King*,
Speaker of the
House of
Lords.

Preamble to
the Articles
read.

THE Lords being seated, and the Managers for the Commons, in the Places prepar'd for them at their Lordships Bar; and the Earl sitting on a Stool within the Bar, the usual Proclamations were made for Silence, and for the Commons to appear and make good their Charge of High Crimes and Misdemeanors exhibited against the Earl.

Then the Lord Chief Justice *King*, Speaker of the House of Lords, order'd the Articles of Impeachment to be read; the Preamble to which sets forth: That whereas the Office of Lord Chancellor is an Office of the highest Dignity and Trust; And whereas the said Earl, by his Majesty's Favour, was in the Month of *May* 1718, constituted Lord Chancellor, and took the usual Oaths, to do Justice to Poor and Rich, &c. and continued in the said Office till *January* 1724; and in Right thereof, was intrusted with the Nomination of the Masters in Chancery, who are Officers of great Trust, and associated with the Lord Chancellor, to assist him in the Administration of Justice: And whereas his Majesty did bestow upon the said Earl 14000 *l.* on his being admitted into the said Office; and did grant to his eldest Son, *John Lord Parker*, a Pension of 1200 *l.* per Annum, till he should be made one of the Tellers of the Exchequer, (which he afterwards was) being a Place of the Value of 1500 *l.* per Annum: And the said Earl, besides the Profits of his Office, had receiv'd the annual Pension of 1200 *l.* granted him, *Anno* 1716, for Life: And had also received from his Majesty, a further annual Allowance of 4000 *l.* and many other Advantages; yet the said Earl, not being satisfied with his

his Revenue, or regarding his Oath, but entertaining wicked and corrupt Designs and Views, to procure an exorbitant Gain, by divers unjust and oppressive Practices, did illegally, corruptly, and extorsively take and receive the following, or other great Sums of Money.

That *Richard Godfrey*, Esq; having contracted with *Sir Tho. Gery*, one of the Masters in Chancery, for the Purchase of his Office, at the Price of 5000 *l.* the said Earl, while he was Lord Chancellor, did illegally, corruptly, and extorsively insist on and take the Sum of 800 *l.* from the said *Richard Godfrey*, for admitting him into the said Office; though it be an Office that concerns the Administration and Execution of Justice in the said Court, in Breach of his Oath as Lord Chancellor, and of the great Trust reposed in him.

Article I.
The Articles.

Page 2.

That the Office of one of the Masters of the said Court, becoming vacant by the Death of *Samuel Browning*, Esq; the said Earl did illegally, &c. take of *James Lightoun* 6000 *l.* for admitting him into the Office of Master in Chancery.

Article II.

That *John Borret*, Esq; having contracted with *John Meller*, Esq; one of the Masters in Chancery, for the Purchase of his said Office for 9000 *l.* the said Earl did illegally, &c. receive of the said *John Borret* 1575 *l.* for admitting him a Master in Chancery.

Article III.

That *Edward Conway*, Esq; having contracted with *John Orlebar*, Esq; a Master in Chancery, for the Purchase of his said Office for 6000 *l.* the said Earl did receive of the said *Edward Conway* 1500 *l.* for admitting him a Master.

Article IV.

That *William Kynaston*, Esq; having contracted with *William Rogers*, Esq; a Master in Chancery, for the Purchase of his said Office for 6000 *l.* the said Earl did illegally take of the said *William Kynaston* 1575 *l.* for admitting him a Master.

Article V.

That *Thomas Bennet*, Esq; having contracted with *John Hickcocks*, Esq; a Master in Chancery, for the Purchase of his Office, at the Price of 7500 *l.* the said Earl did illegally take of the said *Thomas Bennet* 1575 *l.* for admitting him.

Article VI.

That

Page 3.

Article VII.

That the Office of a Master in Chancery becoming vacant by the Death of *William Fellows*, Esq; the said Earl did illegally take of *Francis Elde*, Esq; 5250 *l.* for admitting him a Master.

Article VIII.

That the Office of a Master in Chancery becoming vacant by the Death of *John Borret*, Esq; the said Earl illegally took of *Mark Thurston*, Esq; 5250 *l.* for admitting him a Master.

Article IX.

That whereas *Thomas Bennet*, Esq; about the Month of *August*, in the 10th Year of *K. George*, was possessed of the Office of Clerk of the Custodies for Life; which Office concerns the making Commission to enquire of Ideots and Lunaticks, and Letters Patent for the Custody of their Persons, &c. And the said *Thomas Bennet* having agreed with *Hugh Hammersly*, Esq; to resign the said Office, in Order to obtain a Grant of it for the said *Hugh Hammersley*, he the said Earl, being then Lord Chancellor, did refuse to permit and accept of such Resignation, till the said *Thomas Bennet* had paid him 105 *l.* and then the said Earl being Lord Chancellor, and one of the Lords Justices, did, during his Majesty's Absence, cause the said *Thomas Bennet* to be accepted, and procure a Grant of the said Office for the said *Hugh Hammersly*: Which Grant did accordingly, in the Month of *September* following, pass the Great Seal; for which the usual Fees were paid over and above the said 105 *l.* in Deceit of the Crown, and Violation of his Oath, as Lord Chancellor, &c.

Article X.

That the said Earl did illegally and corruptly make divers other Officers and Ministers of his Majesty, for Gift and Brocage, and sell divers other Offices concerning the Administration of Justice, in the Court of Chancery, for divers great Sums of Money, in Breach of his Trust, his Oath, &c.

Article XI.

That the said Earl, in Order to increase the illegal and corrupt Gain, arising to him by the Sale of the Offices of Masters in Chancery, in whose Hands the Effects and Money of the Suitors were lodged, by Order of the Court, did admit several Persons to the said Offices of Masters, who were of
small

small Substance and Ability, and very unfit to be trusted with the Suitors Money; and did in open Court, while he sat as Lord Chancellor, falsely represent the said Persons, as qualified in every Respect for the said Trust.

That an unjust and fraudulent Method had been practised in the said Court, since the Earl was Lord Chancellor, on Sale of the Offices of Masters, and upon the Admissions of new Masters, the Prices for the Purchase of the said Offices being paid out of the Monies and Effects of the Suitors, deposited in the Hands of the respective Masters surrendering or dying, either by Way of Retainer of the Purchase-Money in the Hands of the Master resigning, or of replacing the Money disburs'd for such Purchase or Admission, by the succeeding Master, out of the Money or Effects of the Suitors coming into his Hands; by which Practise the Value of the said Offices was much advanced, and Persons of small Ability encouraged to contract for them; by which Means great Deficiencies had incurr'd in the Offices of several Masters, which they had not been able to make good. And though the said Earl was well acquainted therewith, in Order to increase his unjust Profit, by selling the said Offices and Admissions, (the Price of which, in Consequence thereof, was receiv'd by him out of the Effects of the Suitors, with which he was intrusted) did not take any Measures to reform the said Abuse, but did suffer the said fraudulent Practise to be exercis'd, without any Controul or Check; whereby great Imbezilments had been made of the Suitors Money and Effects in the Offices of the several Masters, who had not been able to pay their respective Balances owing upon their Accounts.

That *Fleetwood Dormer*, Esq; one of the Masters of the said Court, having embezil'd great Part of the Money and Effects belonging to the Suitors, by Means whereof there was a great Deficiency in that Office; and having absconded for some Time, Application was made to the said Earl to secure the Person of the said *Fleetwood Dormer*,

Article XII.

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Article XIII.

Dormer, and compel him to make Satisfaction to the Suitors, for the Money and Effects so imbezil'd; yet the said Earl, from the Apprehension that a publick Discovery of the said Deficiency might lessen his unjust Gain in selling the said Offices, neglected to secure the Person or Effects of the said *Fleetwood Dormer*, or to make a proper Enquiry into the said Deficiency: But on the contrary did, by many indirect Practises, endeavour to conceal from the said Suitors, the Condition of that Office; and upon Motion made to him by them in the said Court, after the said *Fleetwood Dormer* had absconded, to have their Effects transferr'd to some other Master, for the better securing the same; the said Earl, in Order to delude the Suitors into a Belief their Effects were safe, and to prevent a publick Enquiry, did say in open Court, that the Suitors need not be in Haste, and did then falsely and deceitfully declare, that the said *Fleetwood Dormer* was only gone to take the Air, and that he would return in a little Time, and all would be well.

Article XIV.

That the said *Fleetwood Dormer* having, towards Satisfaction of the said Suitors, assign'd to *Henry Edwards*, Esq; who succeeded him in the Office of Master, a Debt of 24046 l. 4 s. due from *William Wilson*, Banker, to the said *Fleetwood Dormer*; the said Earl, for the unlawful Purposes aforesaid, without Regard to the Interest of the Suitors, did authorize and direct a precarious and trifling Composition with the said *William Wilson*, on his paying 1463 l. 2 s. 1 d. and assigning 10000 l. Part of a Debt of 22060 l. 12 s. 5 d. pretended to be due to the said *William Wilson* from *Edward Poulter*; and did by a private Order, not made in open Court, order the said *Henry Edwards* to accept of the said Composition, in full Discharge of the said Debt; which said *Edward Poulter* was a Person insolvent, and has since absconded for Debt, and none or but a very small Part of the said ten thousand Pounds has been, or is ever likely to be receiv'd.

Article XV.

That the Earl of *Macclesfield*, in Order to conceal the Deficiency in *Dormer's* Office, did order several Masters of the Court to bring in their Accounts of the Cash, Effects, and Securities belonging to the Suitors, which were in their Hands, with Intent to terrify the Masters thereby, so far as to oblige them to contribute large Sums, to answer the Demands of that Office: And further to engage them to a Compliance in that Respect, he represented to them, that unless they would do it, the Money and Effects of the Suitors would be taken out of their Hands. That by this Means he did induce Nine of the Masters to contribute Five hundred Pounds apiece, which several of them did out of the Suitors Money in their Hands; and this being done, they were never obliged to bring in their Accounts.

Article XVI.

Page 5.

That *Elizabeth Chitty*, Widow, having obtain'd an Order of the 17th of *March*, 10 Geo. whereby Mr. *Edwards*, who succeeded in Mr. *Dormer's* Office, was order'd to pay her 1000 l. Part of 10000 l. due to her, which had been paid into Mr. *Dormer's* Hands; Mr. *Edwards* complain'd of this as an Hardship on him, who had never receiv'd the Money: Upon this the Earl would have perswaded the Rest of the Masters to pay the Money, to prevent a parliamentary Enquiry; and they refusing, he paid it himself to *Ascan Christopher Lockman*, for the Use of the said Mrs. *Chitty*; intimating at the same Time however, that she must not expect any more of the 10000 l. which had been paid on her Account into *Dormer's* Hands. That on a Motion, *Harper* against *Casse* and others, relating to 260 l. which having been paid into Mr. *Dormer's* Hands, was in Danger of being lost; the said Earl falsely and deceitfully declar'd, he had heard there was a Deficiency in *Dormer's* Office, but knew nothing of it, only as publick News.

Article XVII.

That notwithstanding the said Earl knew of the great Deficiency in *Dormer's* Office, yet to conceal it, in Order to carry on his corrupt and

unjust

unjust Designs, he made Orders upon Mr. *Edwards* for the Payment of several Sums, which were paid without Regard to the Proportion, the Rest of the Suitors were justly entitled to out of *Dorner's* Effects, and consequently to their great Loss and Prejudice.

Article XVIII. That the said Earl, notwithstanding he very well knew that the Masters of the said Court did from Time to Time dispose of and employ the Money and Effects of the Suitors; and it was represented and proposed to the said Earl, in Order to prevent future Losses, that the Effects and Securities belonging to the Suitors, should be placed out in such a Manner, as that the Power of disposing, employing, or in any other Manner trading with the same, might be totally taken from the said Masters: And it was further proposed, that the said Masters should give some reasonable Security to answer the Balance of such Case, as should from Time to Time be in their Hands. The said Earl proposing to make an unlawful Gain, by the Disposal and Sale of the Offices of Masters in Chancery; and in Order to induce Persons to give him a greater Price for being admitted into the same, did not require or demand any Security whatever, to be given by the said Masters on their Admission. And the said Earl, with the same corrupt View, neglected to enquire into the Accounts of the said Masters; and did fraudulently permit and encourage the Masters of the said Court, to employ and traffick with large Sums of Money belonging to the Suitor, and to make Interest thereof for their own unjust Gain and Profit; nor did he take any Care that the Effects of the Suitors should be placed out, so as to prevent the Masters trafficking therewith; by Means whereof great Deficiencies, to the Amount of many thousand Pounds, had been occasioned in the Offices of several Masters, to the Loss of the Suitors of the said Court.

Article XIX. That his Majesty having directed an Inquiry to be made into the Accounts of the Masters, to the Intent

Intent proper Measures should be taken for the Security of the Suitors, the said Earl, in Order to obstruct the same, and to prevent a parliamentary Inquiry into the Condition of the Masters Offices, did advise them to assist each other with Money and Effects, representing to them, that it would be for their Honour and Service to appear able and sufficient; and that if they made a bold Stand now, it would prevent a parliamentary Enquiry——That the Earl also persuaded several of them to make false Representations of their Circumstances to his Majesty, by adding a Subscription to their Accounts, that they were able and willing to answer the Effects in their Hands; though the Earl knew the contrary; and that several Masters did, according to the Earl's Advice, supply others with Money and Effects, to make a false Shew of their Abilities.

Page 6.

That the said Earl did at several Times borrow of some of the Masters of the said Court several great Sums belonging to the Suitors, deposited in the Hands of such Masters, and did make Use of the same for his own private Advantage.

Article XX.

That the said Earl, whilst Lord Chancellor, did in an illegal and arbitrary Manner extend the Power of the Court of Chancery beyond its lawful Bounds, assuming a Power of dispensing with and suspending and controlling the Statutes of this Realm, in Violation of the Rights and Liberties of the Subject, his Oath as Lord Chancellor, &c. particularly in the Case of the Widow Tyssen, whom he refused to permit to be Guardian to her posthumous Son, &c.

Article XXI.

But these two last Articles, with some others, being waved by the Commons, it is not necessary to enlarge upon them.

The ANSWER of THOMAS Earl of MACCLESFIELD, to the Articles exhibited by the Knights, Citizens and Burgeſſes in Parliament aſſembled, in the Name of themſelves and of all the Commons of Great Britain, &c.

The Earl's Answer to the Preamble of the Articles.

Page 7.

THE ſaid Earl, ſaving to himſelf all Advantage of Exception to the ſaid Articles, &c. for answer thereto ſaith : That having for ſeveral Years executed the Office of Chief Juſtice of the Court of King's Bench, his Maſteſty, on the 10th of *March* 1725, created him Baron of *Maccleſfield* ; and in Regard to his Circumſtances, for the better Support of that Honour, granted him 1200 *l. per Annum*, payable at the Receipt of the Exchequer ; and that in the Beginning of *May* 1718, he was by his Maſteſty's Favour appointed Lord Chancellor of *Great Britain*, and took the uſual Oath of Office ; That while he was Lord Chancellor he enjoy'd the uſual Salary, Fees and Profits, which are much leſs than they are generally eſteemed to be : And that his Maſteſty granted him the Salary of 4000 *l. per Annum*, during the Time he ſhould continue Lord Chancellor ; but this was no more than had been conſtantly enjoy'd by his Predeceſſors ; That his Maſteſty did alſo ſign a Warrant for Payment of the Sum of 14000 *l.* mentioned in the ſaid Articles to the ſaid Earl, 2000 *l.* whereof was the uſual Allowance from the Crown, towards the Expences in entering on the ſaid Office ; and the Reſidue, was his Maſteſty's Royal Munificence to the ſaid Earl ; That his Maſteſty did about the ſame Time grant to his Son *George Parker*, who was then entering on his Travels, the annual Penſion of 1200 *l.* determinable upon his Maſteſty's granting him the Office of one of the Tellers of the Exchequer for Life ; which his ſaid Son was actually put in Poſſeſſion of in *July* 1719, whereby the ſaid yearly Penſion determined. And the ſaid Earl ſaith, That during his Continuance in the ſaid Office of Lord Chan-

Chancellor, he never once had a Design, View or Wish, to raise to himself any exorbitant Gain or Profit, much less of using any unjust or oppressive Methods, to extort or obtain any Sum whatsoever, as in the said Articles is suggested; but such Views and Practises are inconsistent with the whole Tenor of his Life and Actions; and in case it be thought proper to lay before your Lordships an Account of his Estate and Fortune, and of the considerable Sums of Money he has distributed for the Relief and Support of others; it will appear that he is not such a designing, avaritious and oppressive Man, as in the said Articles he is represented; That he Hopes he shall be allowed to distinguish between Acts themselves, and the Inferences drawn from them; and that when he admits a Fact, he may not be understood to admit that such Fact was done by him upon such Motives, and with such Designs, or in such Manner as is suggested in the said Articles; and with this Reservation he Answers, first generally, to such of the said Articles as relate to the making any Present by Persons admitted to the Office of Masters in Chancery; That the same hath been long practis'd in the Time of his Predecessors, and such Presents have been reckon'd among the Perquisites of the Great Seal, and never before look'd on as Criminal; That the giving or receiving such Present is not Criminal in it self, or by the Common or Statute Law, which the said Earl lays before your Lordships, not only in his own Defence, but in Vindication of so many great and excellent Men who have been his Predecessors in the said Office, and have all along done the same; and of others who have been Lords Chief Justices, Masters of the Rolls, and other Judges, who have likewise receiv'd Presents upon the Admission of the respective Officers under them, and who the said Earl is assur'd never apprehended themselves guilty of any Crime.

His Answer to
the Articles
themselves,

To the first, second, third, fourth, fifth, sixth, and seventh Articles, the said Earl further saith, Particularly to the first Seven.
That before the 24th of *July*, 1721, he did ad-

mit *Richard Godfrey, James Lightborn, John Borret, and Edward Conway, Esqrs;* into the Offices of Masters in Chancery, and every one of them, did voluntarily send him a Present on that Occasion, which he accepted; and that after the said 24th of *July, 1721,* he did admit *William Kynaston, Thomas Bennet and Francis Elde,* into the Offices of Masters in Chancery; and every one of them did voluntarily send a Present to the Earl on their respective Admittances, which he likewise accepted; but that it being pretended by the said *Kynaston and Bennet,* that they were by such Presents disabled answering so much Money due from them to the Suitors; the said Earl did afterwards, and before the Impeachment, return the said Presents, amounting to 1575 *l.* each in open Court, to be applied for the Benefit of the Suitors; and that the said Earl retain'd no more of the Present sent him by the said *Francis Elde,* than 1850 *l.*

To the 8th.

8. To the 8th Article the said Earl saith, That in *July* last, the Office of one of the Masters became vacant by the Death of *John Borret, Esq;* who died Intestate, but whether solvent or insolvent, he cannot say; but on Notice of his Death, he desir'd *Rich. Godfrey* and *John Bennet, Esqrs;* two other Masters, to enquire into his Effects, who inform'd the said Earl that they believ'd there would be no Deficiency, and secur'd a considerable Part of the Effects of the said *Borret,* and enter'd a Caveat in the Prerogative Court, to prevent Administration being granted to any Person who might embezel the said *Borret's* Estate; and afterwards, at the Request of the said Earl, proceeded to obtain Sentence in the Prerogative Court for Administration to be granted them, for the Benefit of the Suitors of the Court, which, upon their Waiving it, was granted to *Mr. Paxton;* but the said Earl thought it proper to admit another Master to carry on the Business of the Court, who might be entitled to demand the Effects of the Suitors, from the Representative of the said *Borret;* and therefore, about the 5th of *August*

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August last, did admit *Mark Tburston*, Esq; a Master, who voluntarily sent the said Earl a Present, whereof Two thousand Pounds only were retain'd.

9. To the 9th Article he saith, He believes *Thomas Bennet*, Esq; was Clerk of the Custodies, which Office is in the Gift of the Crown, by Grant under the Great Seal, but denies he insisted on 105 l. or any other Sum, to permit the said *Thomas Bennet* to resign it; but saith, that altho' the said Office be granted by the Crown, it has always been look'd upon as the Right of the Lord Chancellor, to recommend to that, and all other Offices under the Great Seal, and to approve the Deputies to execute the same; and upon such Recommendations, and approving Deputies, have accepted Presents, and owns he did accept a Present on admitting Mr. *Hammersly*, in this Article mention'd.

10. In Answer to the 10th Article, he saith, The same is conceiv'd in such general Terms, that it is not expected he should give a particular Answer thereto; however, That during the Time he was Lord Chancellor, he never took any Money or Gratuity for making or admitting any Officer whatever, unless those above-named, except in the Cursitor's Office, where he owns he has, as all his Predecessors did before him.

11. That the 11th Article being general, he answers generally, That he never admitted any Person to the Office of Master, but who was of Substance and Ability, and fit to be trusted in such Office, or recommended to him as such, and believes he may have declared, that he thought the then Body of Masters as good, both with Respect to their Estates, Ability and Integrity, as had been at any Time before.

12. To the 12th he saith, That if there was any such Practice of paying for the Places of the Masters out of the Suitors Money, he was ignorant of it; but admits, That neither he or his Predecessors ever gave any particular Directions for Schedules to be made of the Money and Effects

fects of the Suitors, to be delivered over to the succeeding Masters; but believes by Virtue of the general Order of Transfer, upon every Admittance, such Schedules were made; and if the ill Consequences mention'd in the said Articles had followed, from the not ordering such Schedules, which he does not admit, he insists, the same could not render him criminal.

13. In Answer to the 13th, he saith, That after *Christmas*, 1720, he was inform'd the said *Fleetwood Dormer* had withdrawn himself to *Holland*, and thereupon directed Mr. *Hiccocks* and Mr. *Rogers*, the two Senior Masters, to enquire into his Affairs, and consider what was proper to be done; and that in Pursuance of such Directions, the said two Masters did search the Chambers of the said *Fleetwood Dormer* in *Lincolns-Inn*, but found no Account whatsoever, or any Effects of Value; That he put a Stop to the Transferring of the Stock, then in the Name of the said *Fleetwood Dormer*, in any of the Publick Companies; but the said *Fleetwood Dormer's* Person being thus out of Reach, and his Accounts and Effects wholly unknown, except the Stock, which could not be dispos'd of without his Concurrence, a Proposal was made to the said Earl, that the said *Fleetwood Dormer* might have a Promise of his Liberty, on his coming over and Assigning all his Effects; and the said Earl seeing no Way open to get any Thing for the Suitors, and being made to believe, that if any Deficiency should happen, it would be made up by the other Masters, did agree, That in Case the said *Fleetwood Dormer* would come over, and make a full Discovery of his Effects, and assign them for the Benefit of the Suitors, he should have his Liberty; and the said Earl, saith he, does not remember any Application was made to him by the said Masters, for any Assistance of the Court touching the Person or Effects of the said *Fleetwood Dormer*, but what he granted, so far as he thought it tended to the Benefit of the Suitors; and believes no Application was ever made to him by the Suitors, to
secure

secure the Person of the said *Fleetwood Dormer*, or compelling him to make them Satisfaction; That the said Earl never endeavoured to conceal the true State of the said Office from the Suitors; nor did any of them apply themselves to him till very lately, to look into the same; and that he remembers nothing of his Using any such Expression as is charg'd in the said Article, either before or after the said *Fleetwood Dormer* absconded.

14. To the 14th Article the Earl saith, That Page 9.

Henry Edwards, Esq; therein mentioned, succeeded the said Mr. *Dormer*, in May, 1721; but by Reason of the great Disorder and Loss apprehended in the said Office, the Earl quitted all Advantages that might have accrewed to him on Disposal thereof, and left it to the other Masters to raise what Money they could thereby, towards making good the Deficiencies therein, and thereupon 5000*l.* was rais'd by Disposal of the said Office to Mr. *Edwards*, and applied to the Benefit of the Suitors; That the Debt from *William Wilson*, in the Article mentioned, was assign'd by *Dormer* to *Edwards* in Trust, to be dispos'd of as the Court should direct; but the said *Wilson* being in no Condition of paying his Creditors the Whole of their Debts, the said Mr. *Edwards*, in June 1722, by his Petition to the said Earl, proposed the Accepting a Composition from the said *Wilson*; which being referr'd to Mr. *Hiccocks*, another Master, he was of Opinion, that the Accepting the said Composition would be for the Benefit of the Suitors; whereupon the Earl, in a proper and usual Manner, order'd the same to be accepted; and he believes the said Composition was made and agreed to, upon a Consultation of all or most of the Masters, who the said Earl did believe would use their Endeavours to get as much as they could.

15. To the 15th he saith, That in February 1720, he order'd his Secretary to write to the several Masters to bring in their Accounts of the Cash, Effects, and Securities of the Suitors in their Hands; but denies it was done with any unjust

just Purpose to terrify the Masters to make a Contribution towards satisfying the Demands on *Dormer's* Office, but believes they contributed freely out of their own Money, and did no more than follow a Precedent of the like Nature, on the Failure of Doctor *Edisbury*, a former Master; That his real Intention in calling for the said Accounts, was to inform himself of the Condition of the several Offices, the better to make proper Regulations concerning the same; and that not finding the Accounts brought in, as he expected, he caus'd another Letter to be sent them; and by both Letters directed the particular Method in which he would have their Accounts made up; but the Earl being afterwards convinc'd, how difficult and tedious a Work it would be, and what Obstruction it would give to the Business of the Court, and that at last it could not be depended on with any Certainty, he was forc'd to lay aside the Design, and content himself with going on in the same Road his Predecessors had done, and begs Leave to observe, That what has lately been done with Respect to the Accounts of the said Masters, shews the insuperable Difficulty of such an Undertaking.

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16. To the 16th, the Earl saith, That about the 17th of *March*, 1723. An Order was made for *Henry Edwards*, Esq; to pay *Eliz. Chitty* 1000*l.* Part of the Money brought before Mr. *Dormer*; but Mr. *Edwards*, not having then sufficient Effects of Mr. *Dormer* in his Hands, refus'd Payment thereof; and that in *July* following, Mr. *Lockman*, in the Articles mention'd, applied himself to the Earl to help the said Mrs. *Chitty*, to the said 1000*l.* alledging he was to marry her, and that the said 1000*l.* was to perform a Composition made with his Creditors, which would be void, if he had it not in a very short Time, and he should be ruin'd; and the Earl being mov'd by his pressing Importunities, did order his Secretary to pay him the said 1000*l.* out of his own Money, and take an Assignment of the Benefit of the Order, which was done accordingly; and that upon
Mr.

Mr. *Lockman's* Pressing for a further Sum, for the said Mrs. *Chitty*, the said Earl might tell him, That the said One thousand Pounds was all that he must expect from the said Earl, and believes he had no Discourse with the Masters, to persuade them to pay it.—— That as to the last Branch of this Article, he might express himself to this Effect, in the Cause between *Harper* and *Cafe*, (*viz.*) That he had indeed heard of the said *Dormer's* Deficiency, but that it had never yet come judicially before him, upon Complaint of any of the Suitors of the Court, and ordered it should be referred to Mr. *Edwards* to enquire into.

17. To the 17th Article he saith, That he never endeavoured to conceal the Deficiency occasion'd by Mr. *Dormer's* Failure; but as he was under a Persuasion that the same would all in due Time be made good, and no Application being made to him to put any Restraint on the Payments, he did not think it incumbent on him, *ex Officio*, to declare an Average; nor does he know of any Order made by him, for Mr. *Edwards* to pay any Money lodg'd with Mr. *Dormer*, except the Order in the Case of *Chitty*.

18. To the 18th the Earl saith, He never knew how the Masters kept or dispos'd of the Money belonging to the Suitors; That several Proposals had been made to him by Persons he consulted on this Occasion; some of which he thought impracticable, some insufficient, and some inconsistent with that compleat Regulation he hop'd to make; he remembers no Proposal that would take it totally out of the Power of the Masters to dispose of the Securities or Effects, or effectually secure the Cash of the Suitors; he admits, he did not demand any Security of the Masters at their Admittance, because it had not been done by his Predecessors; nor was he so much as ask'd to do it by any of the Parties interested; but that he gave no Permission or Encouragement to the Masters, to employ or traffick with the Suitors Money, for their own Gain or Profit.

19. To

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19. To the 19th he saith, That upon Consideration of *Dormer's* Deficiency, and of the Danger of further Inconveniences in Relation to the Suitors Effects in the Hands of the Masters, &c. he had apply'd himself to his Majesty to depute some of the Privy Council to take the Matters aforesaid into Consideration, in order to the Establishing such Regulations as might tend to the Honour of that High Court, and the Advantage of the Suitors; and his Majesty accordingly nominated several Lords, and others of his Privy Council, to be a Committee to take the same into Consideration; who began with the Accounts of the said Masters; wherein the Earl begs Leave to appeal to such Lords as attended that Committee; if he did not contribute to the Utmost of his Power to have every Thing done which the said Committee thought expedient, and made all such Orders as were judg'd requisite, and so press'd the Execution thereof, that not only the Accounts of all the Masters were brought in, but the Securities in all their Hands, and the Cash of most of them lodg'd in the Bank of *England*; and therefore he is surpriz'd with finding himself charg'd with obstructing the Taking those Accounts; and that he never thought of preventing a parliamentary Enquiry, any otherwise than by making it unnecessary, and procuring to the Suitors a full Redress of their Grievances, which he look'd upon to be his Duty.—— That while the said Accounts were making, every one of the said Masters declared, They had Effect sufficient to answer their whole Accounts, w. . . the Earl firmly believ'd to be true; and Mr. *Holford* having wrote under his Account, some Declaration to that Effect, he advis'd them all to write the same Words under their Accounts; but never thought of a Contrivance to have them appear deceitful, or seem what they really were not; and they did withdraw to make the Subscription, and soon after deliver'd them to the Earl, who carried them to the Committee; but upon Reading them
it

it was observ'd, they had not all us'd the same Words, but had varied considerably.—— And the said Earl further saith, that a subsequent Order being made for the Masters to produce their Securities and Cash, they made great Complaint, that so many Hundred thousand Pounds should be requir'd at so short a Warning, and desir'd the Earl to allow them further Time; the Earl thereupon requir'd them to bestir themselves, and raise it immediately, telling them, that since they had Effects to give Security, they might find Friends to furnish the Money; and believes he did say, That some of their own Bretheren might be able to let them have Money, till they could raise it another Way; but if any of them did supply others with Cash to produce, only to make a false Shew and Appearance of their Ability, to answer the Balance of their Accounts, the said Earl knows nothing of it, and did not give the least Encouragement to it.

20. To the 20th he saith, That he never made use of any Money belonging to the Suitors, but believes, in *December*, 1720, he did borrow 1500 *l.* of Mr. *Godfrey*, one of the Masters, which he repaid within the Compass of a Year; and the said Mr. *Godfrey* would not be prevail'd with to take any Interest for it; and that he never borrowed any Money whatever of the Masters of the said Court, except as above set forth.

21. To the 21st the said Earl saith, That upon the strictest Review of his Behaviour, he is not conscious that he ever did, in any illegal or arbitrary Manner, extend his Power, or the Power of the Court, beyond their just Bounds, or did arbitrarily or illegally assume to himself, as Lord Chancellor, any unjust and unlimited Power of dispensing with, suspending, or controlling the Laws, &c. And with Regard to the particular Case of *Rachel Tyson*, Widow, he endeavours to shew it had been misrepresented: The Decree in that Cause having been made by the Consent of all Parties; and as the Commons did not insist on
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the Two last Articles, it seems unnecessary to enlarge further on this Part of the Earl's Answer.

The Commons Replication to the Answer of Thomas, Earl of Macclesfield.

The Commons
Replication.

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THE Commons have consider'd the said Earl's Answer, and observe, That he hath industriously avoided giving a direct and particular Answer to several Matters, positively and certainly alledg'd against him, which must necessarily lie in his own Knowledge, and hath attempted to disguise and cover the real Crimes laid to his Charge by immaterial and evasive Insinuations; That many Parts of the said Answer are contradictory and inconsistent with each other; upon which they might demand Judgment; yet the Commons being able to maintain the Truth and Justice of their Accusation, are willing to enter into the Examination thereof; and do aver their Charge of High Crimes and Misdemeanors against the said Earl to be true, and that he is guilty in such Manner and Form as he stands impeach'd.

To all the Articles he pleads generally *Not guilty*, and the King's Pardon as to all Offences before 24 July, 1721.

The Commons reply, and aver their Charge.

The Commons
Replication.

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Sir George
Oxenden opens
the Charge.

THEN the Managers proceeded; and Sir George Oxenden opened the Charge, setting forth the Nature of the Crimes, with their Aggravations at large, *viz.* Acts of unjust Oppression, of wilful Neglect, of partial Administration of Justice, of open Violation of Duty, and of secret Intrigue to elude publick Justice, in order to the amassing together immense Sums of Money; That insufficient Persons were admitted Masters of the Court, as the fittest Instruments to effect his Purposes; That the Offices were bought and paid for out of the Suits

Suitors Money, (which greatly raised the Price;) and the Masters were to re-imburse themselves by Trafficking with the Remainder, and Pillaging those under their Care; That the unavoidable Consequence of Lodging in their Hands such Power over their Cash, was, that the first ill Run would Crush them, and occasion great Deficiencies; but lest that calamitous Prospect should deter Men from Contracting, Artifices were used, to hide it from the World; That Mr. *Dormer* having embezzled 25000 *l.* of the Suitors Money, the Earl at the Bar made no proper Inquiry into his Deficiency, nor took any Care about his Effects, but endeavoured to conceal from the Suitors the State of that Office, lest the Discovery should lessen his unjust Gains from the Sale of the Places; which was a wilful Neglect, an Artifice to carry on a Fraud, a Contempt of Duty, for the Sake of Corruption; That when he found himself surrounded with Difficulties, and dreaded a publick Examination, he made an Order for bringing in the Masters Accounts, to terrify and induce them to contribute towards the Supply of *Dormer's* Deficiency, the better to conceal the same; in Pursuance of which, Money was contributed, (and some of it paid since the Act of Grace); and then the Accounts no longer insisted on: If his real Design was to examine them, it was as proper after that Time, as before; but tho' *Dormer's* Deficiency (which gave the Occasion of Inspecting into the other Offices), still continues; yet the Design was never carried into Practice, till the King gave Directions for it; nor has the Earl made any Regulations therein; That his was only a Pretence of Regulating; a Dissimulation of Duty, to conceal a Fraud; besides, the Proposal, that the Masters should contribute to the Patching up the Deficiencies in each other's Office, is unjust, and of fatal Consequence.

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That his Behaviour in Mrs. *Chitty's* Case (here repeated as in the Articles) was a fresh Endeavour to conceal the Deficiency, backed by the Terrors of a national Inspection, whereby the Masters might

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might be deprived of their Offices, having bought them contrary to Law; That the Continuation of these Arts is no small Presumption, that the End designed was unjust, in his own Judgment; That whilst he reminded the Masters of that Guilt, which he himself shared, he drew an Argument from that very Guilt, why they should assist him in a fresh Offence; that since they had already offended the Laws, the best Way to avoid the Punishment was by a new Transgression. Thus he knowingly exceeded the statutable Limits; and yet, it seems, he knows of no Statute now in Being, on which Judgment can be prayed in this Prosecution. But, as to his Affirmation afterwards, that he knew nothing of Mr. *Dormer's* Deficiency, but as publick News. Where shall we look for Truth and Sincerity, if they are not to be found in the Seat of Judgment? Where shall we place our Confidence, if there is no Dependance on the Affirmation of a Judge?

That the Earl, still in Hopes to cover the Deficiency, made divers Orders on Mr. *Edwards*, for paying the full Dues to some of the Suitors, whilst others were put off with an inconsiderable Share; but though nothing is more noble in the Mind of Man, than a Desire of distributing equal Justice, without which Justice is sacrificed to the Passions of Men; yet there is no Virtue so lovely, no Principle so amiable, but must be prostituted to the Carrying on this wretched Scheme. Such is ever the Fate of those who dip their Hands in Corruption; they engage originally in one Vice only, but are forced to adopt others to keep that a Secret; for it becomes at last necessary to do Injustice for the Sake of Security. People's Necessities may be alike, but their Passions different; and a starving Suitor, of a broken Spirit, might be turned away with a Tenth of his Right, while one more obstinate and bold would wrangle for the Whole. This might facilitate such unjust Dealings for a Time; but could be of no Service to him, but by Stopping their Mouths, disappoint the Application of a publick Remedy. These
miserable

miserable Consequences the Sale of the Masters Places has been attended with; the fraudulent Method of Payment; the uncontrolled Abuses of the Masters; the great Neglect of *Dormer's* Deficiencies; the unjustifiable Concealment of it; the Stretches of Art and Injustice in the Manner of doing it: 'Tis one continued Series of Mal-Administration, for advancing the Profit of the Person at the Bar; else why should so great a Trust, as above 1000000*l.* be reposed in the Masters, without some reasonable Security or Restraint laid upon them; especially since *Dormer* had broke. This it is, that raises the Resentment of the Commons, who farther Charge, That though the Earl knew that *Dormer's* Deficiency was occasioned by Trafficking and Gaming with the Suitors Effects, and that other Masters had it in their Power to mis-employ the Monies and Securities in their Hands; and though a proper Scheme was laid before him, yet he never required any Security or laid any Restraint, but left them to the boundless Liberty of Abusing their Trust, as Avarice and Ambition suggested Occasions. If no Security has been formerly demanded, it was because of the Vigilance of the presiding Persons, by their frequent Inspections into the Accounts. But, were that otherwise, bad Precedents will not justify Omissions; especially where it was so absolutely necessary, as in this Case; and common Prudence teaches us the Necessity of providing against Losses for the Time to come, which our past Negligence has brought upon us; and if the Person at the Bar had the least Intention of Repairing the Breaches made in that Court where he governed; here was the most fortunate Opportunity of doing it; the Masters having in a Manner solicited him to tie up their Hands by proper Restrictions. Had the noble Lord listen'd to this Proposal, the Deficiencies had been prevented, and the Clamours of the World been stopp'd, and the Nation easy. Did not Necessity demand it? The deplorable Havock committed since, shews it did. And shall not the Ruin of Widows and Orphans

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Bad Precedents
will not justify
Omissions.

plead for Punishment and Reparation? The Commons rely upon your Lordships Justice that they shall.

But there is a Charge behind, which sets forth, That his Majesty having directed an Inquiry to be made into the Master's Accounts in *November* last, the Earl did persuade them to make false Representations of their Accounts and Circumstances to his Majesty in Council, and to assist one another with Cash and Effects, to make a false Appearance of their Ability, to prevent a Parliamentary Enquiry; and did oblige them to declare in Writing, at the Foot of their Accounts, that they were able and willing to pay the Balance, though he knew they were not. You cannot but be astonished at the Boldness of this Attempt, to deceive his Majesty at the very Council-Table, and to deprive the Commons in Parliament of that Inquisition for Justice, which the Nation expected at their Hands. The dread Apprehension of Parliamentary Justice is a strong Presumption of his Guilt. It is an Evidence of a Man's Crime, if he flies for it; it is another Circumstance against a Man to be found tampering with a Witness. Your Lordships have seen him, as it were, fly from his Trial, and you will now find him in the most artful Manner tampering with the Masters, and glossing over their Accounts with Touches of his own; hoping to shelter his own Mal-Administration, by putting the Vizard of Integrity on theirs. This is the glorious Exit he makes; *thus* he finishes his *impartial and just Administration!*

The Evidence to support this Charge will be opened by the learned Gentlemen to whom the particular Proofs are assigned; I therefore only beg Leave to make a general Observation or Two on the Nature of the Charge.

The Basis of this noble Person's Crimes is Corruption, a Thing in private Life most detested, and in publick Persons of the most malignant Influence to the State. It deprives the Crown of that shining Lustre, which a just Execution of the Laws reflects upon it; it disarms the People of
that

that Safety which flows from impartial Administration of Justice. The Consequence of which will be, The Crown will lose the Veneration of the People; and the Subjects, uneasy for Want of Justice, will throw off their Allegiance, and by sowing Seeds of Discontent at home, expose us to the Incursions of our Enemies. Will Example plead for him? Surely there are none such: But supposing his Predecessors have ventured upon small Gifts on such Occasions, does it follow, because those were within the Bounds of Moderation, That Extortion of exorbitant Sums, to connive at outrageous Oppressions, should shelter under the Pretence of Example? Alas! I fear Example only operates according to Men's Appetites and Passions. His great * *Predecessor* made no Attempt to conceal a deficient Office in his Time; he had no corrupt Purposes to feed. Happy had it been for the Widows and Fatherless, if he had copied after his Example. To what a low Ebb is the Virtue and Reputation of this Nation reduced, if Impunity shall justify Offences; Bribery receive a Patronage from great Examples, and basest Actions be adorned with the same Lustre and Honour that are only due to the most virtuous. But, the Commons have found him bargaining and bartering an † *Office* in the Gift of the Crown, for the poor and sordid Advantage of 100 Guineas. This is an Instance wherein the Person of the King is insulted in the most flagrant Manner; and by one who had the Trust reposed in him, as one of the Joint Guardians of the Realm during his Majesty's Absence. Can it be expected, when his Majesty's Prerogative is trafficked with and sold by his Trustee, that a poor Suitor's Right should remain secure under his Protection as Chancellor? How often and how gloriously has this Nation vindicated its Honour, in the Ruin it has poured on the Heads of corrupt Judges and Ministers? It was the Loss and Forfeiture of all the Estate of Judge *Thorpe*, for Bribery, in the Reign of *Edward III.* Nay, the Sentence extended to Life, though that should have ended in Im-

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* *Earl Comper.*

† Clerk of the Custodies.

prisonment only: Every one knows the Vengeance hurled on the Earl of *Middlesex*: Who having delayed Justice, and polluted his Hands with Bribes, was sentenced in Parliament to lose all his Offices, to be for ever incapable of any Employment in the State, imprisoned in the *Tower*, fined 50000*l.* never more to sit in Parliament, nor to come within the Verge of the Court. Lord *Bacon's* Case is another Instance.

If the Offences committed by the Earl, and those just mentioned were compared, with their natural Consequences, 'twill be found how much greater Guilt is comprehended in the Charge of this Day. Not to spend Time in enlarging on a Distinction between Bribery *in*, and Bribery *by Colour of* an Office; between Bribery in a Judicial Way, on Account of Judgment in Causes, and Bribery in the Disposal of Offices that concern the Administration of Justice; the Sale of the Masters Places, with the Circumstances already explained, is of more oppressive Consequences than a Judge's accepting a Bribe in Causes depending before him. By Means of the latter, a Person is put to expence to come at his Right, or if deprived of it may appeal: But in the other Case, he can come at no Right at all; his Money is embezzled, the Master run away, the Chancellor in the Secret, and no Remedy left. Is it any Excuse to say, the Master is liable to answer for his own Frauds, and not the Lord at the Bar. If a Keeper of a Madman wilfully neglects his Duty, sees him going to do Mischief, and does not interpose, is not he responsible? But if this Lord did not foresee the Mischief, and yet is the Occasion of it, from the Exercise of an unlawful Act; no Question but he would be answerable. A Person intends to rob the King's Forest, and shooting at a Deer kills the Keeper; no doubt but he is guilty of Murder, because, tho' he did not intend murder, the Act he was about was unlawful. But the Person at the Bar has not this Excuse; he foresaw the Consequence, and his Intention was bad.

When

When the Commons consider his high Station, the King's Favour and Munificence to him, the notorious Violation of his Oath and Trusts, his Prostituting the Authority and Dignity of the Crown, trampling upon the Laws and Statutes, destroying the Right of the Subject; they could not sit still, and see this great Offender triumph in the Luxury of unpunished Crimes, without using their utmost Endeavours to bring him to Punishment, and to make him an Example.

Then the Solicitor General proceeded to open the Evidence; shewing,

Sir Clement Wearg, Solicitor General, opens the Evidence.

That the Nature of the Charge consists in illegally and corruptly Selling of Offices, which concern the Administration of Justice; and in using many unjustifiable Methods for Keeping up the Price, to advance his own unjust Gain.

That the Honour of every Government, and the Happiness of every Nation depend on nothing more than impartial Justice; and the Justice of every Court depends not only upon the Uprightness of the Judge; but likewise upon the Honesty of the lesser Officers.

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From a just Sense of this, the Legislature 5 Edward VI. provided, that where any Office in the Administration of Justice, not excepted in the Statute, was procured for Money, the Office should be void, and the Parties disabled to hold it.

Stat. 5 Edw. VI.

That the Court of Chancery, in which the Earl presided, is by far the most considerable Court of Justice in the Kingdom.

The Masters in Chancery are, next to the Great Seal and the Master of the Rolls, the great Officers of the Court:

They are, by Commission under the Great Seal, associated with the Judges in hearing Causes; and claim a Right to interpose their Opinions in the making of Orders and Decrees:

They are intrusted by the Court to state and report Matters of Fact; on the Truth of which the Justice of the Decrees must depend:

They are sworn to advise the Chancellor; and of late are intrusted with incredible Sums of the Suitors Money.

Great Part of the Charge against the Earl consists in setting up these Places to Sale, and using unwarrantable Methods to encourage Purchasers, and increase the Price.

'Tis surprizing to find in his Answer an Insinuation, that it is not illegal, or against any Statute to sell these Offices.

Surely, no Places concerning the Administration of Justice, are more improper to be sold, or more evidently against the Statute, than these, unless it be Judges themselves.

It must be owned, his Lordship's Expressions are doubtful, Whether he intends the Lawfulness of Selling those Places for a Price, or only taking a voluntary Present.

If there be any Difference between a Present and a Price, 'tis the latter he is charged with Taking; a Price fixed by him, insisted upon, haggled for, and unwillingly paid.

But even this may be said to be nothing more than an Offence against the Statute of *Edw. VI.* which, as it creates the Offence, so it prescribes the Punishment.

Where the Person admitted is equal to the Trust; and the Price given bears a Proportion to the lawful Gain, there may be some Pretence to say; 'tis only an Offence against the Statute.

But if Persons be admitted to a Trust of near 100000*l.* and give more than their whole Substance for the Office: If the Price be more than can be given by one who would be content with the honest Profits: If it be paid out of the Suitors Money; and if to make the Officers Amends, they are indulged to traffick with what is lodged with them for safe Custody only; this is more than a bare Offence against that Statute.

'Tis selling a Licence to defraud the Suitors, and making them pay the Price!

'Tis

'Tis this the Commons charge the Earl with : And this surely is illegal, and against some Law or Statute in Being.

The ill Consequences of this Practice are obvious : The least is the Delay of Justice, from the Master's using Shifts to continue the Money in Hand, to make a Gain by ; and which probably, when called for, may be locked up by some hazardous Contract : But the most fatal is the Loss which the Suitors are likely to sustain ; the Hazard was all Theirs, but the Gain belonged to others.

Whatever Excuses might be made for him, from the great Variety of Business, an Accident happened sufficient to awake the most engaged Attention.

When *Dormer* withdrew, the Masters themselves were alarmed : When it appeared, his Misfortunes were brought upon him by Trafficking with the Money, and lending it to Goldsmiths at 10*l. per Cent.* they expressed a Concern for the Suitors : And, to prevent the like, a Proposal was made to his Lordship by one of them, that the Masters might give Security ; That the Effects might be put in the Name of more than one Master, to prevent the Traffick ;

This might have prevented the Mischief for the Future, in some Degree.

But who then would have given 6000*l.* for the Purchase of a vacant Place, or 1500 Guineas for an Admission ?

For these Reasons the Proposal was not listened to.

Another Accusation is his Amusing the Suitors with false Representation of the Masters Substance, declaring from the Bench, that they were Men of as good Fortunes as ever filled those Places,

Such an Encomium, if really deserved, had been a very great Honour : But it reflects Dishonour, if spoke when scarce any one could credit it ; when 'twas the common Discourse, that a Third of the Masters had given as much for their Places, or more, than they were worth in the World at

the Time; and the Person, for whose Sake the Compliment was made, deserved it the least of any, having but lately been a Receiver of a County, and paid off a large Arrear with the Suitors Money: But there was then a Master's Place vacant!

His Lordship is further charged with endeavouring to conceal *Dormer's* Deficiency; with making a trifling Composition for a large Debt for the Benefit of the Suitors? and with making Orders for Payment out of that Deficient Office, without Regard to Proportion.

He seems to intimate, That he never thought there would be any Deficiency in that Office; but is persuaded all would be made good. How that is consistent with his quitting 1500 Guineas, from the Danger of a great Loss in that Office, is submitted to your Lordships. But surely the Manner in which *Dormer* withdrew, was a strong Symptom of a Deficiency, when the Masters intrusted to secure his Effects, found little more than *Wilson's* Debt to answer a Ballance of near 40000 *l.* when that Fund was reduced to Nothing, by a Composition for Half, upon a Beggar, who has since escaped out of Gaol, and absconds for Debt.

From whence could those false Assurances arise? That he did endeavour to conceal this Deficiency needs no other Proof, than his not doing any one Act in Publick relating to it.

Had *Dormer's* Person been render'd sacred by the extraordinary Promise of Security, yet he might have been interrogated to disclose his Effects; the Suitors might have had Warning to have discover'd his Estate, and prevented any Concealment.

Nothing of this is done: But on the contrary, one of the Suitors, applying to have his Money transferred to another Master, on Apprehension of a Loss, after *Dormer's* absenting, was informed from the Bench, that his Fears were rash; the Master was only gone to take the Air, and all would be well.

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From this Time every Thing was carried on with the greatest Privacy: Orders made for Payment out of that Office, as if clear of Suspicion, contrary to that fundamental Principle of Equity, That where several Persons have Demands out of a deficient Fund, they must bate in Proportion: And though, where that Fund is in private Hands, it may be intelligible to talk of judicial Knowledge, and an *Ex Officio* Declaration of an Average; yet, where the Fund is in the Hands of the Court, the Payment to be made by the Court, and the Loss sustained while the Court was possessed of it; every Knowledge of such Loss is *judicial*, and the Court ought to direct Payment in Proportion only.

He is further charged with endeavouring to disappoint an Inquiry into the Masters Offices: In Order to which he persuaded several of them to make a false Appearance of their Substance, and a Readiness to pay over the Money and Effects.

This was not only a Breach of his Duty as *Chancellor*, but of his Trust as a *Privy Counsellor*; and if he did at the same Time in Council seem to promote the Steps taken there, 'tis a great Aggravation.

Such is the Nature of the Charge of the Commons against the Earl; which they are able to make good by clear Proofs.

Then Sir *William Strickland* began to open the Evidence of the Facts in the 5th, 6th, 7th, 8th and 9th Articles; but as the 9th differs in Circumstances from the other, he left that to the next Gentleman.

Sir Will. Strickland opens the Evidence to the 5th, 6th, 7th and 8th Article.

He sets forth, That notwithstanding the many great and beneficial Favours bestowed on this Earl by the King, all the Honours conferred on him and his Family, the Dignity of his Office, and the great Trust reposed in him, have been prostituted, to satiate a boundless Appetite for unlawful Gain.

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The first beneficial Grant he owns to have received before his Peerage, was 1200 l. per Ann. during the King's Life, in June 1716. In 1718, he was created Lord High Chancellor, and had

14000 l.

14000 *l.* given him, and a Pension of 1200 *l.* *per Annum* to his Son, till he should enjoy the Office of a *Teller of the Exchequer* (as he now does) for Life : And over and above all these, the usual Salary of 1500 *l.* *per Annum* out of the *Chanaper Office* ; the great Profits and legal Perquisites of his Office ; and an Allowance of 4000 *l.* *per Ann.* All which ought to have produced in him a suitable Return of Gratitude, by a *just* and *impartial* Execution of his *Trust*, to the Honour of the King, and the Welfare of his Subjects.

But the Thirst of Gain was predominant : And in Pursuance of that, he *illegally, corruptly* and *extorsively*, by *himself* and *Servants*, did *treat and barter* for the Sale of Offices of Masters in Chancery, which concern the Administration of Justice ; and in the same Manner, did take great Sums of Money for their Admissions.

He does not deny to have taken all the Sums charged in the Article : But alledges, that he took them as *Presents* only, freely and voluntarily given, and such as had been *usual* on such Occasions : But this will appear by the Evidence very different from what he would insinuate in his Answer.

The 5th Article relates to the *illegal* and *corrupt* Admission of Mr. *Kynaston* in August 1721. Before his Admission he was advised by Mr. *Rogers*, (with whom he had contracted for 6000 *l.*) that the *Lord Chancellor* would expect 6 or 700 *l.* for his Admission. Upon this he applied to Mr. *Cottingham*, the Secretary, (who appears to have been the *Broker* on all these Occasions) to be recommended to the *Chancellor* for that Office ; telling him, that, if necessary, he could obtain the *Lord Bradford's* Recommendation. The Secretary answered, that another Master had given 1500 Guineas on the same Occasion. Mr. *Kynaston* then offering 1000 *l.* *Cottingham* reply'd, he could mention nothing less to the *Chancellor* than 1500 *l.* but, being afterwards asked, what Sum would be *insisted on*, answered, It must be 1500 Guineas ; this being one of the *best* Offices, and fullest

fullest of *Money and Securities*. *Money and Securities* the Property of the Suitors: And how fatal the Masters using such Money for their own Profit, in Order to reimburse themselves the great Sums paid for their Offices, is now too severely felt by Numbers of helpless *Orphans*, and *injured Suitors*. Mr. *Kynaston* however, seeing no Possibility of Admission without paying the whole Sum of 1500 Guineas, complied at last, sent the Guineas to *Cottingham*, who paid them to the *Chancellor*; and the next Day he was admitted.

The 6th Article relates to that of Mr. *Thomas Bennet*: Who, having bargained with Mr. *Hiccocks*, about May 1723, for his Office of Master, at the Price of 7500 *l.* The next Thing was to apply to *Cottingham* to be recommend to the *Chancellor*. *Cottingham* did recommend him, and told him, the *Chancellor* had no Objection against him; that he knew his Father, and should be glad to oblige him: But the Compliment ended with a Proposition of a *Present*, (as he called it) and said, he indeed would name no Sum, but that his Brother (then a *Master*) and Mr. *Godfrey* would easily chalk out a *Method* for him. Mr. *Bennet*, after consulting them, offered 1000 Guineas. *Cottingham*, shaking his Head, declined going to the *Chancellor* with an Offer of *that* Sum, saying, *More* had been given, and he hoped Mr. *Bennet* would not lower the *Price*. Mr. *Bennet* giving Reasons why he hoped Lord *Macclesfield* would accept 1000 Guineas, saying he did not care to give more; *Cottingham* again told him, he did not care to go with *that* Messuage: Upon which Mr. *Bennet* asking him, what had been given by other Masters, *Cottingham* told him 1500 Guineas.

However, Mr. *Bennet* again desired him to go to the *Chancellor*, and said, if that *Sum* would not do, he would give 1500 *l.* *Cottingham* desir'd to be excused from going on that Messuage, and said, my Lord did not love *haggling*; and that if Mr. *Bennet* would give no more, he might lose the Office; for if the *Chancellor* should refuse *that* Sum,

Page 21.

Sum, he would not go with any other *Offer*. Upon this Mr. *Bennet*, at last, consented to give 1500 Guineas; which is what the Lord *Macclesfield* calls a *Free Gift*. The Guineas were paid to *Cottingham*, who paid them to the Chancellor; for which Mr. *Bennet* was admitted in his Office, which cost him 9075 *l.* and that very Sum on making up his Accounts, was wanting in his Office, as the Balance due to the Suitors. His Lordship alledges, that *Kynaston* and *Bennet* pretending they were disabled from answering the Suitors so much Money as he had taken from them at their Admission, he did before the Impeachment pay into Court, for the Use of the Suitors, the two Sums receiv'd of them: But that is a *gross Mistake* in the Answer, for those were not repaid till *after* the Impeachment, and after they had by Affidavit charged the Payment of those Sums as one Cause of the Deficiency in their Offices.

Mr. *Elde* was admitted a Master in *February* 1723, on the Death of Mr. *Fellows*. He applied personally to the *Chancellor*, who told him, he would *treat* with him in a *different* Manner from any Man living. In two or three Days after he applied again to him for the Office, and then mentioned 4 or 5000 *l.* His Lordship said, Mr. *Elde* and I must not make Bargains. After this he told Mr. *Cottingham* his Intention to give 5000 *l.* *Cottingham* advised him to make it Guineas. In Pursuance of this Advice, Mr. *Elde*, about the 1st of *February* 1723, carried to his Lordship's House 3000 Guineas, and 2100 *l.* in Bank-Notes, in a *Dutch Basket*, which he sent up to my Lord by *Cottingham*, who brought him Word *All was well*; and in a Day or two he was sworn in.

A *Present*, innocently made and received, had needed no such *secret* Conveyance. But the Suitors now began to be apprehensive of their Losses, and the Voice of the People to exclaim against that *infamous* Manner of admitting the Masters; and therefore *Privacy* was thought so necessary, that the *Secretary* himself, though concerned in the

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Transactions, was kept ignorant of the Contents in the *Basket*.

The 8th Article relates to the *illegal* and *corrupt* Admission of Mr. *Thurston*. He succeeded Mr. *Borret* the 5th of *August* last; and notwithstanding the Earl alledges, that he was informed by Mr. *Godfrey* and Mr. *John Bennet*, that there was like to be no *Deficiency* in that Office; 'twill be proved, that, *before* Mr. *Thurston's* Admission, there was a great *Confusion* in it; and his Lordship has *forgot himself*, when he says, he *ever* was acquainted by those two Masters, that there was like to be no *Deficiency* in that Office.

The Commons will shew, that notwithstanding the great Losses already sustained, from the *Prices* given by the Masters for their Offices, the great *Confusion* then in that Office, where there is a *Deficiency* of above 10,000 *l.* yet, in the same *unlawful Pursuit of Gain*, he admitted Mr. *Thurston* a Master for 5000 *Guineas*: Thus

Mr. *Thurston*, upon Mr. *Borret's* Death, applied to Mr. *Cottingham*, and the *Price* agreed on was 5000 *Guineas*: The Earl was acquainted with it, and seemed to *agree* to it. But afterwards, on a Report, that he designed the Office for Dr. *Sayer*, Mr. *Thurston* (*well advised, no doubt*) applied to Lady *Macclesfield*: And after many Arguments to persuade her to write to my Lord in his Favour, produced at last 5000 *Guineas* in Bank-Notes; which had their Effect: The Lady wrote, and he was admitted.

The taking such an extravagant Sum for an Office likely to prove so deficient, was so far from being thought *blameless*, even by the Earl himself, that it seems *this Way* was necessary to hide it from the Secretary, who had the first Hand in it: And, to take away all Suspicion from him, he was *order'd*, to be sure to take no *Money* from Mr. *Thurston* on his Admission; which he observed so religiously, as to scruple his own *Fees*.

The Earl, in his Answer, says, he retained of Mr. *Elde's* Money no more than 1850 *l.* and of Mr. *Thurston's* 2000 *l.* By this the World is to believe,

believe, he made an *immediate* Restitution of the Remainder: But no Money was returned to Mr. *Elde* till *November* last, when he needed it to *shew* his Balance; nor to Mr. *Thurston* till *October* last, when 'twas evident a Stop must be put to the infamous *Stockjobbing* with the Suitors Money; and which of Consequence must put those two Masters out of a Possibility of *reimbursing* themselves the great Sums so lately paid for their Offices.

In all these Transactions Mr. *Cottingham* acted by my Lord *Macclesfield's* immediate Direction.

Mr. *Doddington* enforces the same Articles.

Then Mr. *Doddington* proceeded on the same Articles, thus.

The Commons look on this Part of the Charge as a necessary Foundation of the Whole; because from this insatiate Desire of Gain has sprung all the Evils charged in the Rest of the Articles.

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These Facts have been clearly stated, and the corrupt Manner, in which they were committed.

The Illegality of such Practices hath been opened, and will be further explained by others. But when the Earl is pleased to say, *He hopes receiving Presents on such Occasions is not criminal in it self, or by Common Law, and that there is not any Act of Parliament by which it is made criminal*; he must be reminded of the Statutes of *Richard II.* and *Edward VI.* And the whole Tenor of the Common Law disapproves and condemns such Practices (tho' possibly not in any adjudged Case): And these Statutes are Comments and Declarations, to explain and enforce such Construction.

Putting up Offices of Justice to *Auction* is repugnant to plain Reason, and consequently to the Common Law, which is founded on Reason.

And opens the 9th Article.

As to the 9th Article, 'tis an extraordinary Instance of human Frailty: The Earl is here not charged with taking Money of a Person who receiv'd an Office from him, but of one who quitted an Office; not for an Admission, but for a Resignation.

This is the first Instance, where any Person on the other Side of this Bar was ever accused of forgetting his own Dignity, and that of this August Body, and the Honour of his Sovereign for 105 l.

The Case is this. Mr. *Thomas Bennet*, (one of the Masters mentioned in the 6th Article) soon after his Admission was desirous to part with his Office of *Clerk of the Custodies* (which is in the Gift of the Crown) to Mr. *Hammersley*: But, unwilling to do any Thing without Lord *Macclesfield's* Approbation, he applied to Mr. *Cottingham* to obtain it. *Cottingham* promised to acquaint his Lordship: And, a few Days after, told Mr. *Bennet*, he had acquainted my Lord with his Design; but said, a *Present* was expected; and asked him what he would give? (This was their constant Method in all their Bargains; for they were conscious they were doing what was illegal). Mr. *Bennet* replied, He did not apprehend any Thing due to my Lord on that Account; for that he succeeded his Brother, and neither himself nor his Brother made Lord *Cowper* any Present: And he hoped my Lord would not insist upon any Thing, on so trifling an Occasion, since he had so lately paid him so considerable a Sum: But *Cottingham* insisted that a Present was required. Mr. *Bennet* so hard driven, proposed 105 l. In a few Days, *Cottingham* told him, my Lord accepted the 105 l. but he was to look upon it as a particular Favour, that he accepted so small a Sum; and if he would bring him (*Cottingham*) the Money, he needed take no further Trouble; for my Lord would apply to the King for Leave to resign. Accordingly the 28th of July 1723, Mr. *Bennet* carried a Bank-Note of 105 l. to *Cottingham*; and in about three Weeks Time, (his Majesty then abroad) *Cottingham* told him the Sign Manual was come, and chid him for not taking out the Patent: Mr. *Bennet* did take it out; and without Consideration of what he had given before, it cost him about 64 l. for the Seal.

When

When Mr. *John Bennet* resigned to his Brother, he asked Lord *Cowper* if any Thing was due; Who told him *Nothing was due*.

The Earl, in his Defence, says, *Though this Office has been usually granted by the Crown; yet looked upon as the Right of the Lords Chancellors or Lords Keepers to recommend to that, and other Offices under the Great Seal, and approve of the Deputy; and on such Recommendations, and approving of Deputies have accepted Presents, and looked upon the same as their Right.*

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I should not have taken Notice of his endeavouring to shelter himself under the pretended Practices of his Predecessors, if he had confin'd it to this Article: But in his general Answer he says, *That he has done no more than his Predecessors have done before him; and therefore hopes it shall not be imputed as a Fault to him.* This is a new Way of Reasoning; first made Use of by the Earl, to justify his own Faults by the Faults of another, and extenuate the Danger and Malignity of a Distemper by the Extent and Inveteracy of it.

By the Rest of this Argument we may plainly see, that he thinks, the Acceptance of any Gratuity, for advising the King, as a Counsellor, to grant this Office, had been highly criminal: For he was at that Time one of the Lords Justices; and during this whole Charge, a Minister of State. He does not say he obtain'd Leave for Mr. *Bennet* to resign, and a new Grant of the Office as a Favour from the Crown; That he seems to admit would have been highly blameable: But he says, that as Lord Chancellor, he had a Right of recommending to this Office; and his whole Conduct unhappily explains, that he looked upon a Right of bestowing or recommending, to be a Right of *selling*; so that, by his own Argument, he thinks himself justifiable, in doing that as the Chief Officer and Distributor of Justice, which he seems to own would be highly unjustifiable in a Minister of the Crown: Where he says, *That*
during

during his Continuance in the Office of Lord Chancellor, or at any other Time, he never had a Design to raise to himself any exorbitant Gain; and appeals to the whole Tenor of his Life and Actions for the Truth of his Assertion.

This is an Instance, how little the greatest Men are acquainted with themselves, and how liable to Mistake, when they talk of their own Actions: This inordinate Longing after Gain, this Impotence of Mind, where Money was concern'd, is a constitutional Weakness in the Earl, which has given a Tincture to every Thing that passes thro' his Hands: His taking great Sums, accepting small ones, taking 5000*l.* accepting 105*l.* taking for Offices in his own Gift, for those in the Gift of the Crown; taking for Admissions, for Resignations, shews an *Impartiality* indeed, that on every other Account, were highly to be wished in a Judge.

The Commons look upon these Practices so nearly to concern the Welfare of the People they represent, that notwithstanding the great Part they bear in the Constitution of this Realm, they have thought it indispensibly necessary to appear themselves, and demand Justice. And we do it with the more Pleasure, because we are assur'd, that when the *Commons* are Prosecutors, and the *Lords* Judges, the meanest Subject will have Justice, and the greatest not find Favour.

And considering that the Earl is to be judg'd by the most August Assembly in the World, of which he is a Member; it is a suspicious Symptom of his Confidence in his own Integrity, when he lays hold of any Subterfuge to avoid Judgment, or endeavours to secure himself against any Part of it by any Plea, but that of his Innocence and the Justice of his Cause.

Then Mr. *Serjeant Pengelly* said,

Before the Managers laid before their Lordships any Evidence upon the particular Articles, there were some Things necessary to be taken Notice of in the Introduction, not sufficiently admitted by the Earl in his Answer: And that is relating to

Sir Thomas Pengelly, Prime Serjeant, proceeds.

Stat. 12 Rich. 2.
cap. 2.

his immediate Duty as Lord Chancellor, and the Obligation he is under of an Oath, established by Act of Parliament; and the rather, because the Noble Lord has forgot it, not only in his *Answer*, but in his *Conduct*. The Oath is established by the Statute of 12th *Richard II.* which enacts, *That the Chancellor, &c.* shall not name or make any Officer, or Minister of the King, for any Gift or Brocage, but make all such Officers and Ministers of the best and most lawful Men.

This Oath is established by Act of Parliament, and has been taken by the Noble Lord within the Bar.

And Mr. *Lutwyche*.

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Then Mr. *Lutwyche* proceeding observed, That those Things that are not admitted by the Earl's Answer, as they are charged, must be proved: It is admitted by the Answer, that an Oath of Office was taken, and what that Oath was; but he goes no further, nor doth admit any Thing as to another Oath founded on the 12th *Richard II.* which hath been frequently taken by him. 'Tis therefore necessary to have that *Statute* first read, and the Oath that is there prescribed; and to shew that he did take it several Times.

The Statute read.

Mr. *Eyre* (an Officer of the *Exchequer*) sworn.

Then the Clerk read the Statute 12th of *Richard II. cap. 2.*

Serj. *Pengelly* moved, that Mr. *Eyre* might be sworn, to prove the Earl's taking that Oath.

Eyre: This Book I have had in my Custody ever since I have been in the Office, forty Years: 'Tis the Book in which the Statute of 12th *Richard II.* is enter'd; and before the Privy Council name the Sheriffs, this Statute is read over to them, and then the Privy Counsellors are all sworn.

Mr. *Lutwyche*: We desire the Oath may be read.

Eyre: There is no Oath in the Book, 'tis only the Statute.

Earl of *Macclesfield* mov'd that the Witness might speak aloud. He says, There is no *Oath* in the Book.

Eyre:

Eyre : The Statute is read, and the Book presented to the Privy Counsellors, and they are sworn.

Serj. Peng. Whether he was present at any Time when the Earl took the Oath to perform this Statute, in the *Exchequer*?

Eyre : Yes, several Times.

Earl of Maccl. Is there any Oath in that Book?

Eyre : No; nothing but the Statute.

Earl of Maccl. What is it you read or do, when you say the Privy Counsellors are sworn?

Eyre : As soon as this Statute is read, the Bible is presented to the Privy Counsellors, and they kiss the Book.

Earl of Maccl. Is there any Word said to them, or by them?

Eyre : No; The Statute is read over, and the Privy Counsellors kiss the Book.

Serj. Peng. mov'd, that he might read it.

Earl of Macclesfield desir'd he might read the very Words in the Book, as he reads them in the *Exchequer*.

Mr. Eyre reads the Statute accordingly.

Earl of Maccl. Do you say any one Syllable more?

Stat. 12 Ricb. 2.
read.

Eyre : No.

Earl of Maccl. What is it the Officer does at that Time? Page 25.

Eyre : He carries the Book to all the Privy Counsellors, and they kiss it.

Earl of Maccl. Does he not carry it to the Judges too?

Eyre : Yes, every one present kisses the Book.

Earl of Maccl. Does he say any Thing to them?

Eyre : No.

Serj. Peng. Whether, during his Time, this hath not been the usual Method of swearing them?

Eyre : Yes.

Mr. Lutw. It seems to be a Question, whether this is swearing at all: Therefore, What Book is it they kiss.

Eyre : The Bible.

Mr. *Lutw.* Whether this hath not been taken to be swearing them to do what is commanded by this Statute?

Witnesses to
the Evidence
to the Facts,
not their Con-
structions of
Fact.

Mr. Serj. *Probyn* objected to that Question, because the Witness is only called to give Evidence as to the Fact, and not to state his Reasons and Constructions of Fact.

Mr. *Lutw.* Whether this is not the Manner of swearing the Lords, upon the Nomination of Sheriffs?

Serj. *Probyn* objected to that also, as cent'ring in the former. The Witness has given his Evidence, and the Lords will determine, whether it be swearing.

Mr. *Lutw.* Whether this *Kissing the Bible*, upon the Reading this Act, is not usually done at the Time of appointing the Sheriffs?

Eyre: As soon as the Act is read, the Privy Counsellors kiss the Bible.

Serj. *Peng.* Whether they name the Sheriffs before they kiss the Book?

Eyre: No.

Lord *Lechmere*: Whether there is any Entry on Record in the *Exchequer*, of any Oath taken by the Privy Counsellors, on this Occasion?

Eyre: No.

Mr. *West*: The Statute prescribes an Oath to be particularly taken: The Fact has been stated; And whether it does not amount to an Oath, that they will comply with the Act, is left to their Lordships.

Serj. *Peng.* We leave this Evidence to your Lordships Determination, Whether the Earl can excuse himself from the Obligation of this Act as an Oath? 'Tis probable by his future Conduct, he might think there was no Obligation of any Act or Oath upon him. But we proceed to an Account of the Nature of the Offices of the Masters in Chancery; and first produce their Oath; then the Commissions from *Edward VI.*'s Time to this Day; wherein the Masters are joined with the Judges, to hear Causes in the Absence of the Chancellor, to punish Contempts, and execute
a Juris-

a Jurisdiction in that Court. Their Oath varies little from the Chancellor's; and we desire Mr. Pynsent, Deputy Clerk of the Crown in Chancery, may be examined to prove it.

Mr. Pynsent sworn.

Mr. Common Serjeant moved, Whether he had seen the Oath taken, and had administer'd it.

Pyns. Yes.

The Oath of the Masters in Chancery read.

Serj. Peng. There will be Directions given to lay a Copy of this Oath, and of other Records, upon the Table. The next Evidence, are Commissions to the Masters. The first is dated the 9th of October, the 4th of Edward VI. and will be proved by Mr. Paxton.

Mr. Ralph Paxton sworn.

Lord Chief Justice King: Are those true Copies? And where did you examine them?

Paxt. They are true Copies, examined in several Places; some at the Rolls; some at the Petty-Bag Office; and some at the Report-Office.

Lord Chief Justice King: Did you examine them all there?

Paxt. I did.

Serj. Peng. Are they true Copies?

Paxt. I believe they are.

Serj. Peng. We desire they may be read.

Mr. Strange. Are they upon Stamps?

Paxt. Yes.

Serj. Peng. We desire they may be read.

The Clerk reads the Commission, 6 Pars, Pat. 4 Edw. 6.

Serj. Peng. We have several others of the same Nature to be lain on the Table: We now desire to read some later Commissions, some granted when the Earl himself had the Seals.

The Clerk reads a Commission dated 12 May, 4 Geo. and another 20 Jan. 8 Geo.

Serj. Peng. We don't apprehend it necessary to read all the others: We shall deliver them in, unless it be desired by the Earl. We now call Mr. Meller, a Master in Chancery for several Years, to give an Account of the Office.

Mr. Pynsent, Deputy Clerk of the Crown proves the Masters Oath.

Copies of Records laid on the Table.

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Mr. Paxton proves the Commissions.

Commission 9 Oct. 4 Ed. 6; read.

And others later.

Page 27.

Page 28.

Mr. Meller
proves the Na-
ture of the Of-
fice.

Mr. John Meller sworn.

Mr. Lutw. Whether he hath executed the Office, and how long, and what it is?

Mell. I was admitted in the later End of 1708, and continued till July 1720. The general Nature of the Office is, to digest the Matters referred to us upon Hearing, by Way of Report: And further, to tax Bills of Costs.

Mr. Lutw. For whose Service and Use are those Reports made?

Mell. For the Use of the Suitors of the Court: 'Tis to state the Facts, referr'd by the Chancellor to the Master, that are too tedious for the Court to look into.

Mr. Lutw. To whom are they returned and directed?

Mell. To the Lord Chancellor, or the Master of the Rolls. They have these Reports, and make a final Order upon them.

Earl of Maccl. Whether those Reports of the Master are conclusive? Or what is the Method, in case the Parties don't acquiesce?

Mell. The Report is only to state the Facts, and has no Effect till confirm'd by the Court. If what the Master reports seems agreeable to the Court, they confirm it; if not, they vary it, or send it back for further Consideration.

Mr. Common Serj. If any Person apprehends the Facts mistaken, whether have they not an Opportunity of rectifying the Master's Report?

Mell. The Rule is, when a Report is drawn up, the Parties on both Sides have Liberty to object to it before the Master, and to speak to the same Points before the Court.

Serj. Prob. What are the Matters generally referr'd to the Masters?

Mell. The chief are stating of Accounts.

Mr. Strange. Whether any Matters of Judgment are referr'd by the Court to the Master?

Mell. The Nature of Reports requires some Conclusion to be given by the Masters, to the best of their Opinion: But the Court gives a Sanction to them.

Mr. Strange:

Mr. *Strange*: Whether, in any Instance, the Judgment of the Master is final to the Suitors?

Mell. I think, when a Master has taxed a Bill of Costs, there is a *Subpœna* taken out for Costs upon the Report, without going to the Court.

Mr. *Common Serj.* When Exceptions are taken to a Master's Report, Doth the Master or the Court pass a Judgment upon them?

Mell. When a Report is drawn up, a Copy is given to both Sides, and each puts in its Objections: The Master goes thro' the Objections, and forms an Opinion upon the Whole; then it goes to the Court, and the Parties have Liberty to object before the Court, who finally determine it.

Mr. *Common Serj.* Who presided in the Court when he came in?

Mell. Lord *Cowper*: It was in 1708, or the Beginning of 1709.

Mr. *Common Serj.* Whether he gave any Money when he came into the Office, and to whom?

Mr. *Plummer* objects to that Question: We have called this Gentleman to give an Account of the Nature of the Office; we are not come to the Matter of giving Money.

Serj. *Probyn* reserves the Question, till they come to that Part of the Charge.

Mr. *Plummer*: If the Master in Chancery makes a Report, to which there is no Exception, whether the Decree is not according to that Report?

Mell. The Report is first confirmed *Nisi*; and then *Absolutely* upon a second Motion.

Mr. *Lutw.* If there be a Reference concerning an Answer, and the Master reports it insufficient, Whether it is not final, unless the Party excepts?

Mell. 'Tis looked upon as final: For then he submits to put in a farther Answer; and the End of the Reference is answered. But the Party may except if he pleases.

Mr. *Lutw.* Whether, when Costs are tax'd to a particular Sum, it is not final, unless the Party makes Application to the Court.

Mell. After the Master has taxed the Costs, the Clerk in Court, as I take it, makes out *Subpœna's* for Costs of Course.

Earl of Abingdon: Suppose a Sum of Money to be laid out upon a Purchase or Mortgage, Whether the Title of those Estates is not commonly referr'd to the Master's Judgment or Determination?

Mell. In that Case, as to what came before my self, I first sent the Title-Deeds to some able Counsel: When I had his Opinion, if I found no Objection, I thought my self obliged to allow the Security, and accordingly made my Report of Allowance; and then, as Master, set my Hand to the Side of the Deed.

Mr. Lutw. Whether the Masters don't sit upon the Bench with the Chancellor?

Mell. In *Westminster-Hall* three Masters are requir'd to attend the Chancellor; at his own House two; and the like at the *Rolls*.

Mr. Common Serj. If the Gentlemen have done, we beg Leave to ask, Whether, even in the Case of Costs, if the Parties are dissatisfied, Application is not made to the Court (though not by Exception; yet by Motion) to refer it back again?

Mell. In the Case of Costs, it has been a very rare Thing to apply to the Court: Some Instances there have been, I believe, but few.

Mr. Common Serj. Whether, in the Case of Titles, if the Parties differ in Opinion, they apply to the Court, or are concluded by the Master's Opinion?

Mell. I never knew any Title contested before the Court, during my Time; I mean, in my own Case.

Mr. Common Serj. Whether he knows any Case, where the Parties have differ'd about a Title, that the Master's Opinion hath concluded them?

Mell. I don't know while I was in the Office, that any Objection was ever made before me in the Case of a Title.

Mr. Ro

Mr. Robins: When the Masters sit with the Chancellor, What they do there? Whether they sit as Assistants?

Mell. I do not know, that ever their Advice was ask'd.

Dr. Sayer: Whether they ever interposed by Way of Judgment, or took upon them to act as Judges? Page 30.

Mell. I think not. I do not remember any Instance of it.

Mr. Strange: Whether what the Master ever does is confirmed of Course, without a Motion for it?

Mell. There is first a Motion to confirm it *Nisi Causa*; and upon the second Motion, unless Cause be shewn, it is confirmed.

Mr. Strange: If there is not an Affidavit of Service of the first Order?

Mell. I believe there is: But that's the Solicitor's Business.

Mr. Strange: Whether there is not a Certificate also from the Register, that no Cause is shewn?

Mell. That is a Business does not lie before the Master in his Office. I believe, in many Cases, the Register certifies.

Dr. Sayer moves, Whether Mr. Meller was to be called again; having some other Questions to ask him before he departs.

Mr. Serj. Peng. He shall attend, in order to be called when he is wanted. We do not think fit to trouble your Lordships with any other Evidence to that Matter; their Authority in Court appears by the Commissions produced. 'Tis not said that the Masters are to comptrol the Chancellor, but to assist him in the Administration of Justice; of which we have produc'd the fullest Proof: And now we proceed to the Profits of the Chancellor's Office. The ordinary Profits (not to mention the extraordinary ones) made by the noble Lord, may be computed to about 8000*l. per Ann.* So that there is no Occasion to use *other Means*. But not to enter into them all, we shall prove one gross Sum

The Lord Chancellor's ordinary Profits about 8000*l. per Ann.*

Sum of 1500*l.* a Year, paid out of the *Hanaper-Office*. We desire Mr. *Pynsent* may be ask'd, for what annual Sum he accounted to the late Lord Chancellor out of that Office, during his Time? How much he has paid him?

Matters on Record not to be examined to, *viva voce*; but to be proved by Records.

Mr. *Common Serjeant* opposes that Question: Because all Payments from the Crown are upon Record; and therefore that being a Matter of a higher Nature, they ought to produce the Records, and not examine Witnesses *viva voce* to it.

Earl of *Maccl.* This Gentleman is right in his Objection in Point of Law. But, as this Person is the proper Officer, and an honest Man, I will not insist upon the Nicety.

Mr. *Pynsent* examined to the Chancellor's Salary.

Mr. *Serj. Peng.* We desire to know, how much a Year he has paid to the impeach'd Lord out of the *Hanaper Office*?

Pyns. I have no Voucher with me: But, as far as I can charge my Memory, 'tis about 13 or 1400*l.* a Year.

Earl of *Maccl.* If he had his *Memorandum* with him, I was willing he should give an Account of that Matter: But if he speaks only by uncertain Memory, I hope I shall not be bound by it; especially when he assigns the Want of his Vouchers, a Reason why he cannot be certain.

Serj. Peng. How much can he take upon him to say he has paid? Whether by Warrant, or by special Direction: 'Tis only a Question of Fact, whether he can be certain to any Sum?

Pyns. I can say, above 1000*l.* a Year. If I had my Vouchers, I could be more certain.

Mr. *Common Serj.* My Lord waiv'd the Objection, on a Supposition that he had a certain Account, as he has not; I insist on my Objection.

Mr. *Lutw.* We only ask to a Fact; what he paid? And for what Time?

Serj. Probyn: We must insist on our Objection. The Witness is uncertain, He has Vouchers to the particular Sums; and since 'tis in their Power to produce those Vouchers, we submit, that they shall produce the best Evidence in their Power; the Vouchers themselves.

Mr.

Mr. Common Serj. The Answer of the Managers is no Answer. They say, 'tis a Matter of Fact: But that Fact is Matter of Record. It must be proved by Record, because the Law expects the highest Proof that can be made.

Serj. Prob. I desire to know, if there is not constantly a Receipt given on every Payment?

Pyns. Yes; and those Receipts are in the Auditor's Office.

Serj. Prob. Then they can be come at?

Pyns. Yes; they are carried in yearly.

Mr. Solicitor General: I did not expect this Objection: But we submit, whether there is any Foundation for it. If the Matter of Record be insisted on, only with Respect to the Receipt given, there is no need of it: Better Evidence cannot be given to prove Payment, than the Man who paid it. 'Tis the common Evidence. And though a Receipt is given, yet when a Person proves he paid the Money, he need not produce the Receipt. 'Tis better Evidence than the Receipt. A Receipt may be given without Payment: Therefore we apprehend the Witness's Proof of the Payment is sufficient to this Fact. Page 31.

Mr. Common Serj. I apprehend there is no Money either received or issued out by the Crown, but what appears by Record. It is not only those Receipts that is the Strength of the Objection; but when there are Matters uncertain, and the Witness says he cannot declare what it was; Whether upon that Foundation your Lordships will not expect a certain Evidence, not only from the Nature of the Thing, but from the present Circumstances of this Case, when the Witness declares he cannot remember it?

Mr. Strange: I wonder to hear it said, that a Person who swears to the Payment of Money is the most certain Evidence: He may be mistaken; the Receipt cannot: Therefore we must submit it, as they have open'd, whether this is the best Evidence?

Mr. Lutw. I wonder your Lordships should be troubled with any Thing of this Kind, to prove a Salary

Salary of 1500*l.* a Year, when we ask only to the *Quantum* receiv'd from Mr. *Pynsent*. The Question is, Whether we shall ask that? 'Tis admitted, the Witness paid the Salary: All the Question is, what he paid?

Earl of *Maccl.* When the Objection was first made by my Counsel, which I apprehend is right, I did not insist on it. This Gentleman used to pay me Money; and I believe him very honest: But when he says, he is not sure how much, and they were working him up to a higher Pitch; and these Gentlemen, for ought I know, or their Solicitor, may have the Receipts in their Pockets; I thought it Time to stop them. This Gentleman said, it was more than 1000*l.* I admit it to be 1100*l.* a Year, or thereabouts. If I knew exactly, I would tell it; I never intended to dispute it.

Mr. *West*: I would not have it imagined, that the Commons are capable of *Working up a Witness*. It is unworthy of the Commons, and of the Managers: It is impossible they should have any View, but the Truth of the Fact, and the Justice of the Cause. The Question was only what it was he paid; not endeavouring to *work him up* in any Thing. If it was relating to the Crimes charged, I should not have been so much surprized: But this is only an Aggravation contained in the Preamble. I think the Litigating the Point is as great an Aggravation, as the Proving the Payment.

Earl of *Maccl.* I did not intend any Reflection upon the Commons, nor say any Thing which amounts to it. I did say the *Solicitor* might have the Receipts; I know not what they have in their Hands. The Gentleman says, 'tis not a Charge, only an *Aggravation*. If so, should it not be legally prov'd? But I have agreed it to be as much as their Witness can certainly say; and I do not think it any Aggravation; and therefore I said, I believed it might be 1100*l.* a Year, or thereabouts; not being willing to take up more Time.

Serj.

Serj. Peng. The Managers think it not so material, whether it be 11 or 1500 l. a Year. We will take the noble Lord's Admission: And, as it is 1100 l. a Year, it is a reasonable Addition to the Salary.

Earl of Maccl. Do you remember what the Chancellor's annual Salary is?

Pyns. No.

Earl of Maccl. That is Part of the Particular that makes up the 1100 l. per Ann.

Pyns. I think it is.

Earl of Maccl. Is it not 300 l. per Annum?

Pyns. I think it is thereabouts.

Mr. Common Serj. Whether this 1100 l. a Year has been usually allow'd to the Chancellors?

Pyns. I take it for granted it was.

Serj. Peng. We now proceed in Support of the 9th Article, being a distinct Particular of a Sum receiv'd by the Earl, under the most aggravating Circumstances: Abusing the Royal Authority, as one of the *Lords-Justices*. Therefore we give Preference to it; and desire Mr. Bennet may be sworn.

Mr. Thomas Bennet sworn.

Mr. T. Bennet
examin'd to
the 9th Article.

Serj. Peng. Mr. Bennet was possess'd of the Office of *Clerk of the Custodies*, at the Time of the Resignation to Mr. Hamersley. We have the Patent here to shew the Nature of the Office.

The Patent begun to be read.

Teste, &c. 5^o Sept. An. 10 Geo. Regis.

Serj. Peng. Tho' the noble Lord's Name be not in the Patent, it will be known from the Date, Page 32. that it was when he was one of the *Lords-Justices*, and had the Seals.

The Patent begun again to be read.

Earl of Maccl. For saving of Time, I admit a Grant was made to Mr. Hamersley, on the Surrender of Mr. Bennet.

Serj. Peng. We beg Leave the Patent may be read, to shew the Nature of the Office also.

The Patent read.

Serj. Peng. These Patents shew the Office in the Gift of the Crown: And that Mr. Bennet's Resignation

Pat. 10 Geo. for
Clerk of the Custodies read.

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Resignation was for Mr. *Hamersley's* Benefit. Now we shall shew the Consideration or Bargain.

Mr. Common Serj. objects, The Foundation of this Article is a corrupt Agreement for the Resignation of an Office accepted by the Chancellor. In the Patent a Resignation in general is taken Notice of: But they ought to make it appear, that his Acceptance is necessary. The Resignation is not made to the Chancellor: Therefore not to be, by Implication an Evidence to prove it accepted or procur'd by him. The Resignation was in Fact made without his Privy: It is of Record; and must be prov'd by Record.

Mr. Solicitor General: I can hardly think myself at your Lordship's Bar, by the Objections made by the Counsel for the noble Lord. They object before they hear us. When we have produc'd our Proof, they will see whether it be sufficient. 'Tis Time enough for them to object then. If we are to be objected to upon every Witness, before we ask a Question, a great Deal more Trouble will be given, than we are willing to give. We are first to ask our Questions. If we ask an improper Question, they may object to it: Or if the Answer do not prove our Charge, they may observe on it when 'tis given. I little expected this Method at your Lordship's Bar.

Lords: Go on; go on.

Serj. Peng. We do not apprehend there is any Occasion to enter into this Objection. 'Tis a Resignation to the Crown; but through the Hands of the Chancellor, who puts the Seal to the Instrument. But if further Evidence be necessary, they must object to it, when we have gone thro' the Proof. Therefore we beg Leave to ask Mr. *Tho. Bennet*.

Mr. Lutw. I thought they would have objected to our asking Mr. *Bennet* any Questions at all.

Mr. Onslow: 'Tis rather an Observation upon our Evidence; more proper for them when they come to the Defence.

Serj.

Serj. Peng. We beg Leave to ask Mr. Bennet what Application he made for Liberty to resign, and for Mr. *Hammersley* to be admitted?

Benn. As soon as I was admitted a Master, 3 June, 1723, I intended to surrender the Office of Clerk of the Custodies: And, after I had agreed with Mr. *Hammersley*, I applied to Mr. *Cottingham*, the Chancellor's Secretary. I told him, I had an Office in the Gift of the Crown, and was going to a Secretary of State for the King's Leave to surrender it for the Benefit of Mr. *Hammersley*: That the Office being in the Chancery, the Secretary of State would naturally ask the Lord Chancellor, whether the Person propos'd was well-affected and qualified; and therefore I thought it my Duty to acquaint the Chancellor. I desired Mr. *Cottingham* to acquaint my Lord, that Mr. *Hammersley* was the Person. He promised to do it; and appointed me to meet him next Day: When he told me, he had acquainted my Lord Chancellor who the Person was, and that my Lord said he had no Knowledge of him. I told Mr. *Cottingham* he might have acquainted his Lordship that he knew him, living the next Door to him: He is a Gentleman at the Bar well known; and I assure you, in the Interest of the Government. Says Mr. *Cottingham*, my Lord Chancellor does not know him; nor do I. I was surpriz'd at that. But however, said he, there is a Present expected by my Lord Chancellor; and added, that if I made that *Present*, the Thing might be made easy, and my Lord would do what I desired; that is, to acquaint the Secretary of State, that Mr. *Hammersley* was well affected to the Government, and that I desired he might succeed me. Mr. *Cottingham* said, there must be a Present. I told him, it was not usual on this Occasion. When I came in, I gave none to Lord *Cowper*: And my Brother told me, that he gave none; and that he asked Lord *Cowper*, if any Thing was due to him, who denied there was any Thing due, and absolutely refused any Thing. Besides, said I, 'tis very hard for my Lord to ask
or

or accept any Thing from me, because I so lately paid him 1500 Guineas for my Master's Place; but if he will have it, I will give him 100 Guineas. He said he would acquaint the Chancellor: And in a Day or Two, told me, my Lord would accept of that; but it was a Favour to accept of so very small a Present: And my Lord would send to *Hanover* for the King's Warrant, and I need have no further Trouble besides Passing the Patent.

Serj. Peng. Whether he paid the 100 Guineas to *Cottingham*? And in what Manner?

Benn. I paid it in a Bank-Bill of 105*l*.

Serj. Peng. At what Time?

Benn. Long before the Resignation. For, some Time after, Mr. *Cottingham* ask'd what I meant, that I did not pass the Patent; for the Warrant was come over. I said, I had imployed Mr. *Tench* to do it; but would speak to him again: Which I did, and he pass'd it, and I paid him 64*l*. 17*s*. The Fees for passing it.

Serj. Peng. Was that over and above the 100 Guineas?

Benn. Yes.

Serj. Peng. Was there any Deduction on Payment of the 100 Guineas?

Benn. None.

Mr. Lutw. How long after he was admitted a Master?

Benn. About six Weeks. I was admitted Master in the Beginning of *June*, and surrendered the other Office in the latter End of *July*.

Serj. Prob. What was it you desired Mr. *Cottingham* to say to my Lord in your Favour?

Benn. To acquaint my Lord, that I intended to apply to the Secretary of State for Leave to surrender the Place of Clerk of the Custodies; and to beg the Favour, that if the Secretary of State should inquire of him, he might assure him Mr. *Hamersley* was qualified and well affected.

Serj. Prob. Was that all?

Benn. I think that was all.

Serj. *Prob.* Was that all Mr. *Cottingham* told you he had asked?

Benn. I do not remember any Thing more, but only Mr. *Cottingham* answer'd, That my Lord did not know Mr. *Hammersley*; and I must make a Present, and what I desired would be complied with.

Serj. *Prob.* You say you had some Treaty with Mr. *Hammersley* about the Surrender?

Benn. Yes.

Serj. *Prob.* What Sum of Money was he to pay for that Office?

Serj. *Peng.* We hope the Counsel will not ask such a Question.

Mr. Sol. Gen. It is not so proper for us to object: The Objection is to come from him. We may tell him, he is not bound to answer such a Question, unless he pleases.

The Witness himself to object to ensnaring Questions.

Benn. I desire to be excused answering a Question that is not material, on either Side.

Serj. *Prob.* I hope he shall inform your Lordships what was the Consideration to surrender? Or what Money he was to have?

Benn. I might have surrendred without any Money. Whether I gave it, or sold it, is not material.

Mr. *Strange*: I desire to know, whether he gave it away?

Mr. *West*: 'Tis only to induce him to accuse himself of what may be prejudicial to him, and has no Influence on the Question: Which is not, Whether he had a Right to give or sell his Office; but whether the Earl did corruptly take Money?

Not bound to answer them.

Mr. Sol. Gen. 'Tis our Duty, that he should not be surprized into a Question that may subject him to Punishment. It is not properly an Objection from us: But we ought to let him know, that an Answer to the Question may subject him to a Prosecution. If he thinks fit to answer, we have nothing to say to it.

Mr. *Plummer*: I have another Objection. The Counsel intend to draw out this Trial to an exces-

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five Length. I hope your Lordships, for your own Sakes, will not permit it to be answer'd.

Earl of *Abingd.* If this Point be insisted on, on both Sides, they must withdraw. But I hope the Counsel for the noble Lord will consider it before they give that Trouble: For if the Question be judged unreasonable, it would disgrace themselves, and be of no Service to the impeach'd Lord.

Earl of *Maccl.* I apprehend the Question to be material, as the Circumstance of a Present of 100 Guineas out of 2000 perhaps, which he receiv'd for the Surrender, must set the Matter in a different Light: But I decline insisting on it.

Dr. *Sayer*: I beg Leave to ask Mr. *Bennet*, whether he gave 100 Guineas for Permission to resign, or for a Recommendation of Mr. *Hamerley*; or what else?

Benn. That my Lord Chancellor might recommend the Person to the Secretary of State. For I apprehend, it was not in my Lord's Power or Gift: He might have done it without taking any Money.

Dr. *Sayer*: What was the 64 l. odd Money given for? Whether to the Great Seal only; or for the whole Fees in Passing the Patent through all the Offices?

Benn. It was paid to Mr. *Tench*, the Clerk of the Patents, who pass'd it: And the Great Seal was included in it, as I apprehend.

Dr. *Sayer*: Who Mr. *Tench* is? Whether an Officer under the Great Seal?

Benn. He is Clerk of the Patents. I know not who he belongs to.

Mr. *Robins*: Whether Mr. *Cottingham* told him, the Lord *Macclesfield* insisted on any particular Sum?

Benn. Mr. *Cottingham* told me, my Lord insisted upon 105 l. and I argued the Hardship of it.

Mr. *Common Serj.* Whether he ever applied to the noble Lord for Permission to resign?

Benn. I never spoke to my Lord my self.

Serj. *Peng.*

Serj. Peng. Upon what Account it was that Mr. Cottingham, from my Lord, said, a Present was expected?

Benn. I cannot say his Reason; but he said my Lord did not know Mr. Hamersley: And then he said, a Present was expected. I apprehend Mr. Cottingham took it, that I could not do it, without my Lord's Consent.

Serj. Peng. Whether the 100 Guineas was for a Recommendation of Mr. Hamersley; or that the Whole was to be done for it?

Benn. Mr. Cottingham assur'd me, I need have no further Trouble, but Passing the Patent.

Serj. Peng. Whether he depended on these Assurances, or made Application to any Body else?

Benn. I made no other Application. I told Mr. Cottingham, if any Accident happen'd, I hop'd my Lord would return the 100 Guineas: And he said, surely so.

Serj. Peng. The Patent proves this corrupt Bargain executed.

Mr. Lutw. Whether Mr. Cottingham deliver'd him the Sign Manual, or got the Patent pass'd?

Benn. I never saw the Sign Manual. He deliver'd it, I believe, to Mr. Tench.

Mr. Lutw. Did he give you Notice when it came over?

Benn. Yes; and was angry I did not go about it.

Mr. Common Serj. What Time?

Benn. The latter End of July.

Mr. Common Serj. Whether he had not made Application to the Secretary's Office?

Benn. None at all.

Serj. Prob. Nor to any other Person?

Benn. I am positive I did not.

Serj. Prob. Did you ever say you had?

Benn. I do not remember I did.

Serj. Prob. No? Did you never make Application to any Body else?

Benn. I never told any Body, to the best of my Knowledge and Belief. I am very confident I never did.

Mr. Cotting-
ham examined.

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Mr. Peter Cottingham sworn.

Serj. Peng. We call *Mr. Cottingham* to prove when he paid the 100 Guineas to my Lord *Macclesfield*!

Cottingh. In *July*, I think.

Serj. Peng. How long after you received it?

Cott. That Day, or the next.

Serj. Peng. How long before the Patent pass'd?

Cott. I cannot certainly say when the Patent pass'd.

Mr. Lutw. Whether it was when the King was beyond Sea?

Cott. I think it was in *July 1723*.

Mr. Common Serj. What Discourse he had with *Mr. Bennet*?

Cott. *Mr. Bennet* told me he had agreed with *Mr. Hamersley*, and did not think it convenient to keep two such considerable Places which depended upon his own Life only: That he had disposed of this Place to *Mr. Hamersley*, to re-imburse himself Part of the Money he had paid *Mr. Hicocks* for his Master's Place.

Mr. Common Serj. Did he tell you how much he had disposed of it for?

Cott. No.

Mr. Common Serj. What it was *Mr. Bennet* desired him to request of my Lord?

Cott. To my Remembrance, he said, he hop'd his Lordship would accept of 100 Guineas, because he had receiv'd from him so lately a Present for his Master's Place; and desired his Lordship to forward his Petition to his Majesty.

Dr. Sayer: Was this on the first Application?

Cott. Yes; he made but one Application to me.

Dr. Sayer: 'Tis of Consequence; whether he made this Offer the first Time he applied?

Cott. He did; and I paid it Lord *Macclesfield*.

Dr. Sayer: Whether he knew *Mr. Hamersley* before this Time?

Cott. I knew him very well: He was my next Door Neighbour both in Town and Country.

Dr. Sayer:

Dr. Sayer: Did you tell Mr. Bennet you did not know him?

Cott. No; I never told him so. It was impossible I should.

Dr. Sayer: What Character had Mr. Hamersley?

Cott. A very good One.

Earl of Maccl. When you first spoke to me of this Matter, what did you tell me?

Cott. That Mr. Hamersley was my next Door Neighbour, and a Gentleman of as unquestionable a Character as any at the Bar: And your Lordship was pleased to depend on me for his Character.

Mr. Strange: Did not Mr. Bennet say, on what Account he resigned?

Cott. To re-imburse himself the Money paid Mr. Hiccocks for his Office.

Mr. Strange: What Office was that?

Cott. The Master's.

Mr. Strange: Did he mention that?

Cott. Yes.

Serj. Peng. Whether Mr. Cottingham acquainted my Lord of Mr. Hamersley, before or after Payment of the 100 Guineas.

Cott. Before.

Serj. Peng. Upon what Account he receiv'd the 100 Guineas from Mr. Bennet?

Cott. On Account of his Surrender of his Office.

Serj. Peng. Whether, before he agreed with Mr. Bennet, he had informed my Lord of any Proposal, or what was to be expected?

Cott. I do not remember I did. All that pass'd on that Occasion was, Mr. Bennet said, he was willing to give 100 Guineas, and he hoped his Lordship would not insist upon more.

Serj. Peng. Whether, when he came back from my Lord, he did not tell Mr. Bennet, he ought to take it as a Favour his Lordship accepted so little?

Cott. To the best of my Remembrance I did not.

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Serj. Peng. What Answer he brought to Mr. Bennet from my Lord?

Cott. That he agreed to accept of the 100 Guineas according to his Propofal.

Serj. Peng. Whether this Offer was the first Time, or after Mr. Cottingham had spoken to my Lord about it?

Cott. Mr. Bennet propofed to me the 100 Guineas before I spoke to my Lord about it.

Serj. Peng. Whether it was the first Time or a^tter?

Cott. The first Time.

Serj. Peng. Whether Mr. Cottingham did not say, the first Time, that something was expected?

Cott. I believe I did say, the Great Seal would expect something.

Mr. Lutw. Whether that was mentioned before the 100 Guineas were offered?

Cott. Not as I remember.

Mr. Lutw. What did you say on that Occasion?

Cott. That, as he offered 100 Guineas, I told him my Lord was willing to accept of it.

Mr. Lutw. The first Discourse, he said my Lord expected something on the Account of this Office?

Cott. Something by Way of Compliment.

Mr. Lutw. Was that the first Discourse?

Cott. The first that I remember.

Mr. Lutw. How came Mr. Cottingham to know, that my Lord expected something by Way of Compliment?

Cott. Mr. Bennet asked, if I believ'd his Lordship would not expect a Compliment. I told him, I believ'd he would: And then he said he would give 100 Guineas.

Mr. Lutw. Had you any Discourse with my Lord Macclesfield before?

Cott. None at all. I told him it was usual to make a Present: And then he told me, he was willing to give 100 Guineas.

Mr. Plummer: I know Mr. Cottingham is a very honest Gentleman. I desire to ask him, if

Mr.

Mr. Bennet did not then tell him, that when his Brother was admitted, Lord *Cowper* would take nothing?

Cott. He did not upon my Oath. This is the first Word I heard of it. I did not know, whether his Brother paid any Thing or nothing.

Serj. Peng. There is some little Variation, though not material, between *Mr. Bennet* and *Mr. Cottingham*; We beg *Mr. Bennet* may come up again.

Earl of Maccl. I do not oppose it: But 'tis very extraordinary to confront their own Witnesses.

Mr. Lutw. We do it to confirm the Testimony of our Witness.

Serj. Peng. In an Affair of this Nature, 'tis impossible to produce direct Evidence, without producing the Agent imploy'd. *Mr. Cottingham* was my Lord's Agent: And we ask *Mr. Bennet* what Answer *Mr. Cottingham* brought from my Lord Chancellor?

The Witnesses confronted.

Benn. When *Mr. Cottingham* went from me to my Lord Chancellor, there was not a Word of Money mention'd the first Time. I would not so much as put it into his Head: And he return'd the next Day, and told me, my Lord Chancellor insisted upon a Present. Then I said, it was very hard, and I would give my Lord 100 Guineas, if it must be so.

Serj. Peng. Was it not at the second Meeting that he insisted on a Present to my Lord?

Benn. At the second Meeting. At the first Time he did not; because there was no Mention of Money.

Cott. All that *Mr. Bennet* said to me on that Occasion was, that, in regard a Compliment of 1500 Guineas had been so lately given, he hop'd his Lordship would take no more of him than 100 Guineas.

Earl of Maccl. These Gentlemen differ in their Evidence. I would ask *Mr. Bennet* a second Time, whether *Mr. Cottingham* told him, he did not know *Mr. Hamersley*?

Benn. I'm sure, Mr. Cottingham told me, my Lord Chancellor did not know him; and I think he told me, that *he* did not know him. That made me say, *Why, Sir, that's strange you should not know him, when he lives the next Door to yours.*

Earl of *Maccl.* Before, he said Mr. Cottingham said *he* did not know Mr. *Hamersley*.

Benn. 'Tis impossible to swear to a Conversation at so great a Distance.

Earl of *Maccl.* You are not positive.

Benn. I am not positive.

Earl of *Maccl.* Then whether he is positive that he answer'd Mr. Cottingham (*as before?*)

Benn. As positive of the one as the other. This Conversation pass'd between us, as near as I can remember.

Cott. 'Tis very strange I should say so of my next Door Neighbour, and a Gentleman at the Bar.

Benn. Therefore I wonder'd at it.

Cott. 'Tis very strange I should not know him. He is a Gentleman at the Bar, I see every Day at *Westminster*.

Benn. That was the Wonder I made. I might mistake you. I'm sure you said, *My Lord did not know him*; and I believe you said, *You did not know him*. Mr. Cottingham is very deaf, and might mistake me.

Serj. *Peng.* We apprehend, the Noble Lord does not put us to prove his Acting as one of the Lords Justices.

Earl of *Maccl.* If Mr. *Delafaye* is there, I desire he may give an Account of my Acting.

Serj. *Peng.* If they don't admit it, we must call him.

Dr. *Sayer*: We desire he may be called.

Mr. *Delafaye* sworn.

Serj. *Peng.* Whether my Lord Chancellor acted as one of the Lords Justices at the Time of this Patent? Look upon the Date.

Delaf. Yes, he did.

Serj.

Mr. *Delafaye*
sworn.

Serj. Prob. Whether he knew any Thing of Page 38. Mr. Bennet's Petition transmitted abroad; and by whose Direction?

Delaf. By the Direction of the Lords Justices.

Serj. Prob. Whether the Petition desired a Grant of the Office to any, and what particular Person?

Mr. Lutw. When a Gentleman experienc'd in the Law asks Questions concerning written Evidence, we must oppose it, and submit to your Lordships.

Then the Managers having gone through the Ninth Article, the Lords adjourned to Nine o'Clock To-morrow.

The SECOND DAY. Friday, May 7.

Second Day.

The Lords being seated, and the Managers, the Earl and his Counsel placed as before, the usual Proclamations were made.

Lord Chief Justice King: Gentlemen of the House of Commons, you may proceed in your Evidence.

Serj. Peng. The Managers now proceed to the 5th, 6th, 7th and 8th Articles, all relating to the corrupt taking of Money on the Disposal of the Offices of the Masters. The Question is the Manner of taking this Money. The Commons charge it to be by Extortion and Corruption, and drawn out of the Masters without their Consent. The Earl insists, it was freely and voluntarily given, as Presents. To prove the Charge we call Mr. William Kynaston.

Mr. Kynaston sworn.

Serj. Peng. We desire Mr. Kynaston may be asked, when he was admitted one of the Masters?

Mr. Kynaston examined to the 5th Article.

Kynas. August 9, 1721.

Serj. Peng. What Transactions there were before-hand about it, with whom, and what he gave the Chancellor for his Admission?

Kynas.

Kynas. After I had agreed with Mr. Rogers, I desir'd Mr. Baily to go to Mr. Cottingham, to know what my Lord Chancellor would expect for my Admission, and to treat with him. Mr. Baily said, It was best for me to talk with Mr. Cottingham my self. So I went. He mention'd, that Mr. Conway and Mr. Borret had given 1500 Guineas a-piece. I propos'd to him 1000*l.* or 1000 Guineas. He said, he could not mention it to my Lord under 1500. I agreed to give it, but thought he meant Pounds, and prepar'd accordingly: But Mr. Baily afterwards telling me, Mr. Cottingham insisted on Guineas, I sent them to him on the 8th by Mr. Baily; and the 9th I was admitted.

Serj. Peng. What Arguments were used by Mr. Cottingham to raise the Price?

Kynas. I don't particularly remember: But either Mr. Rogers or Mr. Cottingham said, it was *the oldest and the best Office.*

Serj. Peng. Whether any thing was said, that the Office was full of Cash?

Serj. Prob. We apprehend that a leading Question!

Mr. Lutw. 'Tis a proper Question; but we'll put it into another Form: Whether there was any Discourse about the Profits of the Office?

Kynas. I don't remember it.

Mr. Lutw. Was there any about your being recommended by any one?

Kynas. I told him I had the Honour to be known to the Lord Bradford, and desir'd to know whether his Recommendation might be necessary?

Mr. West. What Reason did they give you, why it was the best Office?

Kynas. Because it was the *senior* Office, and had most Causes in it.

Sir William Strickl. What Answer Mr. Cottingham gave him, when he said he believ'd he might obtain that Recommendation?

Kynas. I don't remember any.

Mr. Plummer: Whether any Objection was made by him to the Price, by Reason of any Deficiency in *Dormer's* Office?

Serj.

Serj. Prob. That Question is too leading.

Mr. Sol. Gen. 'Tis a fair Question.

Kynas. I mention'd it to Mr. Rogers, who made little of it; and afterwards to Mr. Cottingham, who seem'd to make light of it, and said it would be *made up*: So that I apprehended it would be of no great Consequence.

Serj. Peng. What Reason did he give why he thought the Admission not worth 1500 l.

Kynas. I don't know that I mention'd any Thing.

Mr. Lutw. In what Manner was the Money Page 39.
paid?

Kynas. I did not count it: But 1500 Guineas was carried in a Bag by Mr. Baily to Mr. Cottingham.

Serj. Prob. Whether he had any Discourse with Mr. Rogers about the Value of this Office, before he spoke with Mr. Cottingham?

Kynas. Yes.

Serj. Prob. How much did he say it was worth?

Kynas. He said he usually made 1700 l. a Year of the Office, and sometimes 2000 l. a Year.

Serj. Prob. What Sum of Money he gave Mr. Rogers for his Place?

Kynas. 6000 l.

Dr. Sayer: At what Time he paid Mr. Cottingham this 1500 Guineas, before or after his Admission?

Kynas. Before, I believe it was the 8th or 9th of August in the Morning.

Serj. Prob. Whether he paid it out of the Suitors Money, or out of Effects of his own?

Kynas. It could not be paid out of the Suitors Money; for I was not then admitted.

Mr. Comm. Serj. Whether Mr. Baily or any Body else, concerned in negotiating this Affair, gave any Account of your Substance and Ability?

Kynas. I believe not.

Mr. Lutw. He said there was a Discourse that the Office was worth 1700 l. or 2000 l. a Year. How was it Mr. Kynaston apprehended these great annual Profits did arise? Whether by the ordinary Profits

Profits of the Office, or the making Use of the Suitors Money?

Kynas. I understood it both together.

Mr. Lutw. I think *Mr. Kynaston* says the Money paid for him by *Mr. Baily* was not out of the Suitors Money, because he was not then admitted; How was it repaid or replaced?

Kynas. I did not imagine, when I came to Town, that the Place would have come to so much: There was 1100 *l.* and 400 *l.* I borrowed of one *Mr. Rogers* at *Temple-Bar*; I afterwards accounted with him for that Money, for I kept an Account of the Money of the Court with him.

Serj. Peng. What Sum of Money was reported to be in your Office, and to go along with the Office as Cash?

Kynas. I was told there was about 20,000 *l.*

Mr. Comm. Serj. Who told him so?

Kynas. *Mr. Rogers.*

Lord Lechmere: When the 1100 *l.* and the 400 *l.* was accounted for to the Person that lent it, he says it was allow'd out of the Suitors Money.

Kynas. Yes, the Money lent me to pay *Mr. Cottingham* I accounted for out of the Suitors Money: I understood it usual to do so, and that others had done it.

Lord Lechm. *Mr. Kynaston* talks of 6000 *l.* being paid by him to his Predecessor: In what Manner was that paid, and out of what Money or Effects?

Kynas. When I treated with *Mr. Rogers*, he mentioned to me what Money he had in his Hands belonging to the Office; and we enter'd into Articles in Relation to my paying him 6000 *l.* for his Place: When I came to Town in Order to take my Office, before I went to my Lord Chancellor's, I gave him a Bond for 6000 *l.* on the 9th, and on the 12th he deliver'd me up the Bond, and paid me 9 *l.* in Money; and I gave him a Receipt for 6009 *l.*

Earl Strafford: When he gave up this Bond; Whether he reckon'd the 6000 *l.* so much short of the Suitors Money?

Kynas.

Kynas. Yes, I did.

Earl of *Maccl.* Whether the Gentleman had any, and what Money in his Hands?

Kynas. I had Money in that Gentleman's Hands: When I lived in the Country, he receiv'd Money for me in Town, and paid as I directed: There was an Account current between us; I did not know what Balance was then in his Hands; but since I find there was about 3 or 400 l. then due to me.

Earl of *Maccl.* He says he had an Account current with that Gentleman at that Time, and kept Cash with him.

Kynas. He used to receive and pay Money for me when I was in the Country.

Earl of *Maccl.* If Mr. *Kynaston* did not afterwards keep, with that Gentleman, the Cash of the Suitors, and his own, promiscuously?

Kynas. Yes.

Sir *William Strickl.* When was the 1500 Guineas paid?

Kynas. On the 8th, and the 9th I was admitted.

Serj. *Peng.* We don't now proceed to examine, as to Payment for the Officers out of the Suitors Money; but only about the Sum paid for the Admission?

Mr. *Lutw.* It will be proper to keep the Evidence entire; and hope the Council on the other Side shall be confin'd to ask such Questions only as are proper to the Article they are upon. We desire Mr. *Charles Baily* may be called.

Mr. *Charles Baily* sworn.

Serj. *Peng.* Whether he paid any Money, and what Sum, to Mr. *Cottingham*, and when?

Baily: A Day or two before Mr. *Kynaston* was admitted I paid 1500 Guineas, which was given for his Admission. I deliver'd it in a Bag to Mr. *Cottingham*.

Serj. *Peng.* For what Use was it paid?

Baily: I apprehend for the Use of my Lord Chancellor.

Mr. *Lutw.* Upon what Account?

Mr. *Baily* examin'd to the same.

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Baily:

PROCEEDINGS against the

Baily: For his Admission to the Office, on Mr. Roger's Surrender.

Serj. Peng. He says it was paid a Day or two before he was admitted.

Sir William Strickl. Before the Payment of this Money, What Discourse was there between you and Mr. Cottingham?

Baily: I was requested by Mr. Kynaston to attend Mr. Cottingham, to know what was expected; and Mr. Cottingham told me 1500 Guineas, as a Sum for Mr. Kynaston's Admission.

Serj. Peng. If the Council for the Lord don't ask this Witness any thing, we beg to call another.

Mr. Comm. Serj. Whether we shall now ask Mr. Baily, as to the Circumstances and Character of Mr. Kynaston?

Mr. Lutw. There is an express Article to that Point; when we come to that, then is the Time.

Serj. Prob. Whether when Mr. Cottingham told him what was expected on his Admission, he told Mr. Kynaston?

Baily: Yes, I told Mr. Kynaston 1500 Guineas was expected.

Serj. Prob. Whether Mr. Kynaston did not immediately consent to give it; or what did Mr. Kynaston say?

Baily: Mr. Kynaston said, he must submit to it, and do as Mr. Cottingham had mention'd; or to that Purpose.

Serj. Peng. Whether Mr. Kynaston inform'd him of offering any less Sum, and what?

Baily: Mr. Kynaston mention'd to me that he thought it had been but 1500 l.

Earl of Maccl. How came Mr. Baily to know it was Guineas?

Baily: Because Mr. Cottingham told me so.

Mr. Cottingham call'd, but did not immediately appear.

Serj. Peng. Mr. Cottingham was Secretary to the impeach'd Lord, during the whole Course of his Administration; he is not immediately under the Power of the Managers, but he is under the Obligation of a Summons, and had Notice to attend.

Mr. Cot-

Mr. Cottingham
examin'd to
the same.

Mr. *Cottingham* appears, and is sworn.

Serj. *Peng*. Whether Mr. *Cottingham* paid over the Money he receiv'd of Mr. *Baily* to my late Lord Chancellor, and when?

Cottingh. The 1500 Guineas I receiv'd from Mr. *Baily*, I paid to my Lord in a Day or Two, I believe the next Day; it was very soon after I receiv'd it from Mr. *Baily*.

Serj. *Peng*. Whether he acquainted the Earl, that he had receiv'd it upon Mr. *Kynaston's* Admission?

Cottingh. Yes, I told the Earl, that Mr. *Baily* had paid me the Money by Mr. *Kynaston's* Direction.

Serj. *Peng*. How long was that before Mr. *Kynaston's* Admission?

Cott. Two or three Days. A Day was appointed for his Admission, but something happen'd that he could not be admitted that Day.

Sir *Will. Strickl.* If Mr. *Kynaston* did not at that Time object the great Deficiency in *Dormer's* Office?

Cott. Upon my Oath he did not.

Sir *W. Strickl.* Whether he did not tell Mr. *Kynaston*, this was one of the best Offices?

Dr. *Sayer*: I hope, they shall be confin'd to the general Question, what was said, and not to the Particulars.

Sir *W. Strickl.* What was said of the Goodness of the Office?

Cott. I said before the Committee, that when he agreed to give the 1500 Guineas, I told him he had purchas'd a very good Office: And I did say, there was a great Deal of Business in it: But I never knew what Money was in the Office; nor do I know to this Day. I own, I did say before the Committee, that I told him, he had purchased a good Office.

Serj. *Peng*. Was this before or after the Agreement with Mr. *Kynaston*?

Cott. I think at the same Time, just after we had settled the Compliment to be paid Lord *Macclesfield*.

Serj. *Prob.*

Serj. *Prob.* Whether he remembers any Mention of 1000 *l.* or Guineas by Mr. *Kynaston*?

Cott. I remember nothing of it. He ask'd me, what my Lord expected? I told him, what my Lord had from the preceding Masters he expected from him. I never heard a Word of 1000 *l.* or Guineas, nor knew of it. Mr. *Baily* may remember more of it: 'Tis above four Years ago.

Serj. *Peng.* We now proceed to the Sixth Article, relating to Mr. *Thomas Bennet*.

Mr. *Thomas Bennet* sworn.

Mr. *Bennet* examined to the Sixth Article.

Serj. *Peng.* Give an Account of the whole Treaty.

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Benn. I was admitted the 1st of June 1723; and before my Admission, as soon as I had agreed with Mr. *Hiccocks*, I applied to Mr. *Cottingham* to acquaint my Lord Chancellor, and to let me know, whether he approv'd of me to succeed him. A Day or two after, he told me, he had acquainted my Lord: He said my Lord express'd great Respect for my Father, Mr. Serj. *Bennet*, and was glad of this Opportunity to do me a Favour; and had no Objection to me. He then mention'd a *Present* expected, and did not doubt but I knew that. I answer'd, I had heard there was, and was willing to do as usual. I desired to know what would be expected. He said he would name no Sum; because I had a Brother a Master, and was well acquainted with Mr. *Godfrey* who had recommended me; and they would tell me what was proper for me to offer. I told him I would (and accordingly did) consult them: And returning, told Mr. *Cottingham*, their Opinion was 1000 *l.* (but that I would not stand for Guineas) was sufficient. Mr. *Cottingham* shook his Head, and said, That will not do; you must be better advis'd. Why, said I, 'tis a noble Present. Says he, a great Deal more has been given. Says I, my Brother did not give so much, nor Mr. *Godfrey*: And they told me it was sufficient. Says he, I do not care to go with that Proposal; you may find some Body else. I reply'd, I do not know whom to apply to. He answer'd, sure, Mr. *Bennet*, you will
I not

not go to lower the Price; I can assure you, Mr. *Kynaston* gave 1500 Guineas. I said that was 3 or 4 Years ago; and since then there have been several Occasions of lowering the Price: The Fall of Stock hath lower'd the Value of Money; and I think I mention'd *Dormer's* Deficiency, and I did not know the Consequence; and therefore I thought, when Stock and every Thing was fallen, 1000 Guineas was more now, than 1500 when Mr. *Kynaston* gave it. He still insisted, he did not care to go with that Message. Said I, only acquaint my Lord; and if he insists upon more, I will consider of it. Says he, there is no *Haggling* with my Lord: If you refuse it, he may resent it so far, as not to admit you at all, and you may lose the Office. I was loth to lose the Office, and told him, I would give 1500 *l.* He said Mr. *Kynaston* had given Guineas. I ask'd whether it must be in Gold. He said, in what you will, so it be Guineas. In a Day or two he told me, my Lord was pleas'd to accept of me, and would admit me as soon as Opportunity serv'd, and he would give me Notice. Accordingly he gave me Notice about the latter End of *May*, that my Lord had fix'd a Day for my Admission: And my Father and I went to my Brother, and took him up, in order to pay our Respects to my Lord on that Occasion. We had not been long but a Message was brought, that my Lord was very ill, and I could not be admitted, but I should know the Time. I afterwards ask'd Mr. *Cottingham*, how my Lord did; and when I should be admitted? Says he, I cannot fix the Day; but be in a Readiness, and I will send for you. Accordingly, 1 *June* 1723, he sent for me to come immediately, and alone; for my Lord would swear me in that Morning. I went; and Mr. *Cottingham's* first Question was, If I had brought the Money? I told him, To be sure I should not come without it. He ask'd, what it was in? I told him in two Bank-Bills; one of 1000 *l.* and the other 575 *l.* He took them up to my Lord; and returning, told me, my Lord was

ready to admit me. I was carried up Stairs; and then sworn in his Bed-Chamber.

Serj. *Peng.* In what Name those Notes were made payable, or in what Manner made?

Benn. I cannot remember the Names: They were sent for from the Bank; but I believe they were feign'd Names.

Serj. *Peng.* Why he thinks they were feign'd Names? And for what Reason the Notes were taken in feign'd Names?

Benn. Because I did not think it proper to take them out in my Lord's Name, nor in my own.

Serj. *Peng.* Of whom he receiv'd those Bank-Notes? Whether they were his own, or borrow'd?

Benn. I borrow'd a Draught of my Brother. He kept his Cash at the Bank: And I sent, and order'd the Notes to be made out in feign'd Names.

Serj. *Peng.* Whether he means his Brother, the Master?

Benn. Yes.

Serj. *Peng.* Where did he keep his Cash?

Benn. At the Bank.

Serj. *Peng.* What Conversation he had with my Lord *Macclesfield* when he was admitted?

Benn. I had no Conversation with him before I was sworn. My Lord was in his Bed: And as soon as I was sworn in, he shook me by the Hand, and wished me Joy; and said he had a Respect for my Father and the Family: And, said he, you are sworn in by a Dying Chancellor. I told him, I hop'd his Lordship would live many Years.

Mr. *Cottingham* call'd.

Serj. *Peng.* To whom he paid the 1500 Guineas he receiv'd of Mr. *Bennet*?

Cott. To the Earl of *Macclesfield*.

Serj. *Peng.* Whether immediately, or at what Time?

Cott. Immediately.

Serj. *Peng.* This is all we ask: We only observe upon the Answer to these two Articles, that afterwards,

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Mr. *Cottingham* to the same.

wards, and before the Impeachment, he deliver'd the Presents receiv'd of Mr. *Kynaston* and Mr. *Bennet* into the Court of Chancery, in open Court.

Serj. *Prob.* What Conversation there was between him and Mr. *Bennet* concerning the 1500 Guineas?

Cott. Mr. *Bennet* told me, he had agreed with Mr. *Hiccocks* for the Surrender of his Office: That he was known to the Earl; but, if he wanted a further Character, his Father, Sir *John Bennet*, and his Brother would give it. I acquainted the Earl; who told me, he knew Mr. *Bennet*, that he had a good Character, and had married a good Fortune, and the Family were wealthy; so that he would oblige him. A Day was appointed to admit him: But the Earl falling sick, it was then delayed. Mr. *Bennet* pressing to have it done, said, Mr. *Hiccocks* refus'd to go on with the Business: And he had been complimented upon it; the Family knew it, and he was loth to be disappointed; and he teiz'd me almost out of my Life. Upon that I promis'd to speak to the Earl; and as soon as the Earl was able to do Business, it was done.

Serj. *Prob.* What was the particular Sum Mr. *Bennet* offer'd?

Cott. 1500 Guineas.

Serj. *Prob.* Did he talk of any less Sum?

Cott. Not a Farthing less. He ask'd me what was expected? I told him the Sum Mr. *Kynaston* had paid him, which was 1500 Guineas; and he never offer'd less.

Serj. *Prob.* Whether he offer'd 1000, or 1500 Guineas?

Cott. What he offer'd me was 1500 Guineas; and I never heard of a Farthing less.

Earl of *Maccl.* What Condition I was in, in Respect to my Health, at that Time?

Cott. Very ill. Mr. *Bennet* having press'd to be admitted the first Opportunity; I think your Lordship fell ill the last Day of *Easter-Term* 1723: And I meeting Dr. *Mead*, he told me, the Earl was in so dangerous a Condition, that if his

Distemper had not a Turn, he could not live 24 Hours. The Doctor and I sup'd together. He bid me be at the Earl's next Morning. I met him there; and he told me the Distemper had a Turn, and he might get over it. I ask'd the Doctor, telling him there was a Business Mr. *Bennet* press'd me to do, Whether it would be safe for the Earl to do it? He said, if it did not admit much Thought and Company, it might be done.

Earl of *Maccl.* What was the Occasion that Mr. *Bennet* was desired to come alone?

Cott. Your Lordship's Indisposition: And for that Reason, I sent to Mr. *Hiccocks* for his Surrender; because my Lord could not see much Company.

Mr. *Strange*: Upon whose Importunity did you ask Dr. *Mead* this?

Cott. I ask'd it my self; but it was because Mr. *Bennet* importun'd me so. And I remember, when I went to his House, he had something of the Jaundice, and look'd ill. I ask'd him if he was fit to be admitted? I thought Mr. *Bennet* would not have been so eager; if he did not think the Earl had been Dying; and that then he would have waited longer.

Mr. *Plummer*: Whether on Occasion of these Master's Places being vacant, he took Directions from my Lord to set a Price, or did it of his own Head?

Cott. I had no Directions in this Matter: But, when any Vacancy or Alienation happen'd, and they ask'd me what Compliment I thought would be acceptable, I told them the Compliment that had been before made. I spoke it as my own Opinion, and without any Direction from the Earl.

Serj. *Peng.* Whether ever he concluded any Bargain with any of the Masters without his Lord's Approbation?

Cott. No.

Mr. *Onslow*: Whether he had not in general, Directions from the Chancellor, to insist upon, or ask any particular Prices?

Earl

Earl of Maccl. I am sorry the Gentlemen do not observe their own Rule, in confining their Examinations to the Articles they go upon: Those only they have a Right to ask to. Not that I am afraid of the Question put, but of its being made a Precedent for giving unnecessary Trouble.

Mr. Onslow: This is proper to this Article, because it charges the Earl with *insisting* on Prices. Therefore I hope the Gentleman shall answer the Question.

Mr. Lutw. We apprehend the Question proper. On the one Side we say these Sums were *insisted* upon, and an Agreement made for them: On the other the Earl says, they were *Presents*.

Serj. Peng. We only propose a general Question, which arises from Mr. Cottingham's Examination. When Money is *expected*, 'tis the same as *insisting* upon it. Therefore we desire to be inform'd, whether he insisted upon any of these Prices, without Direction from my Lord?

Cott. The Masters propos'd those Sums to me, to make such a Compliment to my Lord, and I acquainted him with it. I did nothing without his Approbation.

Serj. Peng. If he did not *insist* on those Prices?

Serj. Prob. I beg the Question may be confin'd to some particular Article they are upon. For as they are now upon two particular Articles, they cannot, according to their own Rules, ask any Question but what relates to them. We desire they may confine themselves to these two Articles they have open'd, let them be as general as they will: But we desire they may confine themselves to those Articles; otherwise one Question may involve all the Articles together.

Serj. Peng. Whether from the Direction he receiv'd from the Earl, he did not insist on those Sums from *Kynaston* and *Bennet*?

Cott. They had both voluntarily agreed of their own Accord to give 1500 Guineas; and I told my Lord of it.

Serj. *Peng.* Whether he did not, by Direction of the Chancellor, insist on those Sums, and he would not receive under?

Cott. I did not. They ask'd me, what I thought the Earl expected? I told them 1500 Guineas. They agreed to give it; and my Lord to take it.

Serj. *Peng.* When the Lord *Macclesfield* agreed to take those Sums, whether he did not insist upon the full of those Sums?

Cott. Yes; he said he would take them.

Mr. *Plummer*: My Lord does not disown the Accepting a Present in general; but avoids saying what particular Sum. Therefore I am apt to think the Instructions to the Secretary might be like the Answer. So that 'tis proper to ask, whether he had not general Instructions, that when any Master's Place should be vacant, he should insist on such a Price?

Cott. I had not such Instructions. The Gentlemen propos'd to me the Sum they were willing to give, and I laid it before the Earl. I had no particular Instructions.

Mr. *Plummer*: Whether he hath not said he receiv'd particular Directions from my Lord to insist upon such a Sum?

Cott. I cannot say but I have: And if you name the Masters, I can answer more particularly.

Sir *W. Strickl.* Whether he has not directly said, he transacted none of these Affairs without my Lord's Direction?

Cott. I own I have said, that what I did he approv'd of.

Earl of *Maccl.* Whether I so much as knew any Thing of the Matter as to any Sum offer'd by Mr. *Kynaston* or Mr. *Bennet*, till he told me the whole Sum?

Cott. No; never.

Earl of *Maccl.* Whether I had any Discourse about Mr. *Kynaston* or *Bennet* being admitted, or the Money they should give, till he told me they would give 1500 Guineas?

Cott. No,

Cott. No, not any. I told the Earl what they offer'd, and he was pleas'd to accept it.

Earl of Maccl. Whether he did not tell me, at the same Time that Mr. *Kynaston* said he would give me 1500 Guineas, that he likewise said, if that was not sufficient I might please my self?

Serj. Peng. I hope the Question may be ask'd general, when they have taken Liberty to interrupt the Managers for asking leading Questions; and hope his Lordship will ask nothing that is leading.

Earl of Maccl. When Mr. *Kynaston* offer'd 1500 Guineas, whether he said any Thing of a further Sum?

Cott. To the best of my Remembrance, I am not certain Mr. *Kynaston* told me, if the 1500 Guineas would not satisfy the Earl, he should satisfy himself. Page 44.

Earl of Maccl. I desire to know certainly whether he told me so.

Cott. I am sure I did.

Earl of Maccl. What did I say thereon?

Cott. You would take 1500 Guineas, and no more.

Mr. Plummer: How Mr. *Kynaston* came to offer more, or to think the Earl so insatiable as to expect more? How Mr. *Cottingham* came to offer from Mr. *Kynaston* more than was ask'd?

Cott. I told you what my Lord *Macclesfield* put to me. I certainly told him so: But as to what Mr. *Kynaston* told me, I cannot be positive. To the best of my Remembrance it was so.

Serj. Peng. We shall not call any more Witnesses on this Article, when it appears plainly that he was intrusted to adjust the Prices; and whether they were given to him or my Lord, is not material. As to this Article, and that relating to Mr. *Kynaston*, we shall leave it with this Observation, The Earl says he did afterwards, and before the Impeachment, deliver the Presents into the Court of Chancery, in open Court. The Impeachment was brought up the 13th of Feb. 1724; when my Lord shews the Time he paid the Money.

ney, it will appear to be ten Days after. The next Article relates to Mr. *Francis Elde*.

Mr. *Elde* sworn
to the seventh
Article.

Mr. *Elde* called and sworn.

Mr. *Lutw.* When was it he was admitted a Master in Chancery.

Elde: 1st of *Febr.* was Twelve-month.

Mr. *Lutw.* Whether he apply'd in Person to Lord *Macclesfield* to be admitted? and whether it was on Death or Resignation?

Elde: Upon the Death of Mr. *Will. Fellowes*, my Friends put it in my Head that this Office might be proper for me. I had some Encouragement at the Bar, and was very unwilling to quit it: But after two Days Consideration I went to my Lord himself; I told him an Office was fallen by the Death of Mr. *Fellowes*; and I was come to wait upon him about it. His Lordship said, he had no Objection to me, he had known me a considerable Time, and believed I should make a good Officer.

Mr. *Lutw.* What further Discourse was there?

Elde: My Lord desired me to consider of it, and come to him again. I went back, and came again in a Day or Two, and told him I had consider'd of it, and if his Lordship thought fit to admit me, I would make him a Present of 4 or 5000*l.* I believe it was 5000*l.*

Mr. *Lutw.* What Answer did my Lord return, when you made him that Proposal?

Elde: My Lord said, Thee and I, or You and I, must not make Bargains.

Mr. *Lutw.* Whether my Lord *Macclesfield* said in what Manner he would treat with him? Whether in a more beneficial Manner than any Body else?

Elde: My Lord *Macclesfield* said, if I was desirous of having the Office, he would treat with me in a different Manner than with any Man living.

Serj. *Peng.* After this Answer, that they must not make *Bargains*, what further Application did he make?

Elde: I made no further Application; but meeting Mr. *Cottingham* in *Westminster-Hall*, I told

fold him I had been at my Lord's, and had propos'd to give him 5000 l. Mr. Cottingham answer'd Guineas are handsomer.

Mr. Lutw. We desire to know what he paid? and in what Manner?

Elde : I paid my Lord———I can't say I paid it him, but I paid 5000 Guineas.

Mr. Lutw. In what Manner? Who did you pay it to?

Serj. Peng. After this Agreement with Mr. Cottingham to make it Guineas, as being handsomer; what he did pursuant to this, and what he carried with him?

Elde : I immediately went to my Lord's, and carried with me 5000 Guineas, in Gold and Bank-Notes.

Serj. Peng. What were they put into? Or in what were they carry'd?

Elde : I put the Guineas and Notes in a Basket, and carry'd them with me in a Chair; when I came to my Lord's House, I saw Mr. Cottingham there, I gave him the Basket, and desir'd him to carry it up to my Lord.

Serj. Peng. What Answer did he return?

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Elde : I saw him go up Stairs with the Basket; and when he came down he intimated to me, that he had deliver'd it.

Mr. Lutw. Whether he acquainted Mr. Cottingham with what was in the Basket?

Elde : I did not.

Serj. Peng. After Mr. Cottingham came, and acquainted you he had deliver'd the Basket, how long after that was it before you saw my Lord?

Elde : I did not see my Lord after that, till I was sworn in.

Serj. Peng. How long was that after?

Elde : Either the same Day or the next.

Serj. Peng. When Mr. Cottingham return'd down Stairs after the Delivery of the Basket, what he said about the Time of his being admitted?

Elde : I do not remember he said any Thing to me about my being admitted. I took that for granted.

Serj.

Serj. *Peng.* Whether he was admitted in the Closet, or in what Room?

Elde : When I was to be admitted my Lord invited me and some Friends of mine to Dinner : I was after Dinner sworn in before them.

Serj. *Peng.* Whether he had the Basket again?

Elde : Some Months after, I spoke to my Lord's Gentleman, and he gave it me back.

Serj. *Peng.* Was any Money return'd in it.

Elde : No.

Mr. *Lutw.* In the Earl's Answer 'tis said, he retained only Part of Mr. *Elde*'s Present. If the Gentlemen of the other Side do not ask any Questions about it, we shall go on.

Sir *Wm. Strickl.* What Mr. *Cottingham* said after he had carried up the Basket?

Elde : Nothing to my Remembrance, but that he had deliver'd it to my Lord.

Serj. *Prob.* How much was return'd him of the 5000 Guineas?

Elde : 3400.

Mr. *West.* When?

Elde : In November last.

Mr. *Onslow* : In what Manner?

Serj. *Prob.* When you went out of Town, and when you returned; and how long after your Return?

Elde : Four or Five Days. As soon as I came from the Country the Earl said he would repay me : For in May before he had taken Notice of this Present, and that he would make me easy.

Serj. *Prob.* Before you went out of Town?

Elde : Before.

Serj. *Prob.* When did you return?

Elde : The 19th, 20th, or 21st of November.

Serj. *Prob.* How soon after did you see my Lord?

Elde : Very soon.

Serj. *Prob.* What Discourse had you with him about it?

Elde : My Lord said, he would return me my Money, and that he had done it before, had it been convenient.

Serj.

Serj. *Prob.* How soon after this was the Money return'd?

Elde: Two or Three Days.

Mr. *Onslow*: In what Manner, and by whom?

Elde: My Lord *Parker* sent for me, when the Chancellor was at *Westminster*, and told me my Lord Chancellor had desired him to pay me 3400 *l.* and he did pay it.

Mr. *Lutw.* Upon what Occasion he was going into the Country?

Mr. *Onslow*: I desire he may first answer, in what Manner, by whom, and where the Money was repaid him?

Elde: 1400 *l.* in Bank-Notes, and 2000 *l.* in India Bonds.

Mr. *Onslow*: Whether he gave any, and what Receipt?

Elde: When Lord *Parker* paid me, he said my Lord *Macclesfield* had order'd me the Money; but not having so much by him, had order'd him to make it up: And as 2000 *l.* of it was his own Money, he desir'd me to give a Note of the Receipt of it.

Serj. *Peng.* Was that a Note for Repayment, or a Receipt?

Elde: An Acknowledgment of the Receipt.

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Serj. *Peng.* Whether it did not contain a further Acknowledgment for Repayment?

Elde: Not that I know of.

Serj. *Peng.* Was it said upon whose Account the Money was paid?

Elde: Yes.

Serj. *Peng.* How many Days before he was to produce the Balance of his Cash?

Elde: A Fortnight or Three Weeks.

Serj. *Peng.* Whether it was not necessary for him, in Order to make up this Balance?

Elde: I did make Use of it to that Purpose as having it by me; but I was not so poor, as to be put to a Necessity of so doing. I could have had the Money of any Body that knew me.

Mr. *Lutw.* When was it repaid him?

Elde: I can't tell the particular Time.

Mr.

Mr. *Onslow* : Was it after the Inquiry was directed to be made ?

Elde : Yes, I was in the Country when the Inquiry was directed to be made, and a Month after.

Mr. *Lutw.* When he was going out of Town, and Lord *Macclesfield* said he would make him easy ; where was he going, and upon what Occasion ?

Elde : Into *Staffordshire*, where my Effects lie.

Mr. *Lutw.* Upon what Occasion ?

Elde : I never miss'd going in *August* for ten Years past.

Mr. *Lutw.* Whether there was any particular Occasion for going at that Time ?

Elde : I went to look into my Affairs there. I called at *Stafford* first, and declar'd my self a Candidate for the Election.

Mr. *Lutw.* When he returned ?

Elde : About the 19th or 20th of *November*.

Mr. *Plummer* : Whether the Note (which he gave Lord *Parker*) was taken up again, and when ?

Elde : Lord *Parker* sent for me, and gave it me again. I don't know that I saw my Lord *Macclesfield* till after that.

Mr. *Plumm.* When the Note was deliver'd up ?

Elde : In the Beginning of *December*.

Mr. *Sandys* : Whether he did not refuse to swear to the Balance of his Account ; And what was the Occasion of it ?

Elde : When I had deliver'd in my Account, the Question ask'd the first Time, was propos'd, not by any of the Judges appointed, but by Sir *Nath. Gould*, in such a Manner that I could by no Means take it. He asked me, whether I owed any Thing ? And I was to swear I owed nothing. I told him I could not swear that. I had some Arguments with him, about the Absurdity of such an Oath ; and said, If I owe a Million, that's nothing to the Purpose : There is the Balance. I laid the Money upon the Table, and insisted upon leaving it with them.

Mr.

Mr. Sandys : Whether the Note was deliver'd to him after he refused to take the Oath ?

Elde : It was.

Mr. Sandys : Whether that Note was the Occasion of his Refusing ?

Elde : I can't say but it was an Ingredient in it ?

Sir G. Oxenden : Where this Note is ?

Elde : When Lord Parker deliver'd it me, I lapt it up, and put it in my Pocket ? My Lord asked, why I did so ? I answer'd, I would keep it as a *Memorandum* of my Lord Chancellor's Favour : But when I came home, considering it would be of no Service, and might be hazardous, I tore it ?

Dr. Sayer : Whether he did look upon himself discharged of that Money, or thought himself bound to answer it ?

Elde : I do not think myself bound to answer it.

Dr. Sayer : Whether he apprehends it to be a Free Gift ?

Elde : I do.

Mr. Cottingham call'd again.

Mr. Cottingham to the same.

Serj. Peng. What he did with the Basket after he had it from Mr. Elde.

Cott. I carried it to my Lord, and set it down in his Study.

Serj. Peng. What did you say to my Lord ?

Cott. Nothing.

Serj. Peng. What Answer my Lord Macclesfield made ?

Cott. None.

Serj. Peng. Did he open the Basket ?

Cott. No.

Serj. Peng. Whether after that he appointed any Time for Mr. Elde to be admitted ?

Cott. I think he was admitted that very Day.

Serj. Peng. Whether he receiv'd any Thing from Mr. Elde, besides what was in the Basket ?

Cott. Not a Farthing, except my Fees : Nor more of any of the Masters than my usual Fees.

Serj.

Serj. *Prob.* Whether, when Mr. *Elde* desired to be admitted, there was any other Person who made any Offer for it?

Cott. Mr. *Lucas* of the *Temple* was recommended by Mr. *Bulstrode*, late Commissioner of the Excise: And he told me, if the Earl would admit him, he would give him 6000 *l.*

Serj. *Prob.* Whether did you inform the Chancellor of it?

Cott. Yes: And his Answer was, that Mr. *Elde* was of a Family for whom he had a great Friendship, and he should have it 1000 *l.* cheaper than any Body else.

Mr. *Strange*: Whether, before Mr. *Elde* was admitted, he did not acquaint the Noble Lord that Mr. *Lucas* would give 6000 *l.*

Cott. Yes.

Serj. *Peng.* Whether when my Lord said Mr. *Elde* should have it cheaper than any Body, he did not understand by it, that my Lord expected some Body else would give him more?

Cott. My Lord said, he would let Mr. *Elde* have it upon the Score of particular Friendship.

Serj. *Peng.* Whether he did not say, that Mr. *Elde* should have it 1000 *l.* cheaper than any other Person? Whether he did not understand my Lord would have 1000 *l.* more from any other?

Earl of *Maccl.* I hope I'm not to be charged with the Imaginations of this Gentleman. He is asked about his Apprehension of my Intention in a Case that did not happen. I desire he may be ask'd, what Character Mr. *Elde* had?

Cott. A very good one.

Earl of *Maccl.* Whether he did not know that I had a great Opinion of Mr. *Elde*'s Ability and Integrity?

Cott. He was one your Lordship had a great Opinion of, as very deserving. I never heard you express a better Opinion of any Man.

Serj. *Peng.* We have done with this Article.

Mr. *Mark Thurston* sworn.

Serj. *Peng.* When he was admitted Master, and upon whose Death?

Mr. *Thurston*
examined to
the 8th Article.

Thurst. The 5th of *August* last, on the Death of Mr. *Borret*.

Serj. *Peng*. Whether before his Admission, he made any Application to Lord *Macclesfield*, or any Person concerned for him?

Thurst. I made some Application to his Secretary Mr. *Cottingham*, and propos'd a Present of 5000 Guineas, to be admitted. Mr. *Cottingham* asked my Circumstances, and who would recommend me? After that I waited on the Lord Commissioner *Gilbert*, who went to my Lord at *Westminster*. His Lordship came off the Bench: And after some Conversation between them in the little Room, I was call'd in, and kindly recommended, and my Lord *Macclesfield* seem'd to approve of me. As to the Transaction with Mr. *Cottingham*, he said he would report those Things to my Lord, though he never reported any Thing back to me upon it: But I took the next Steps by the Intervention of Lord Commissioner *Gilbert*.

Sir *William Strickl.* Whether he did not understand, that my Lord agreed to his Proposals?

Thurst. Yes.

Sir *William Strickl.* After the Transaction with *Cottingham*, what further Application was made? And why he was not immediately admitted?

Thurst. It was not expected: Because my Lord Chancellor did not absolutely determine me to be the Person; but said, he had so good a Character of me, that he believ'd I should be the Man.

Sir *William Strickl.* Whether being uneasy about the Delay of admitting him, he did apply to any other Person afterwards?

Thurst. After my being introduced to my Lord, Page 48.
there was some Time for Consideration. Near a Week after, a Message was sent me by Mr. *Cottingham*, that my Lord would be ready to admit me such a Day. Before the Day, I had a Message, that my Lord was engaged to attend the Council that Day. After that I expected another Appointment; and in the mean Time this Affair had got into the News, and People resorted to me to transact the Business of the Office; which I could

could not do without being admitted. After that, a Report was spread, that my Lord design'd to make a Present of the Place to some Gentleman in the Country; which gave me an Uneasiness, and put me upon an Expedient. I waited on the Countess of *Macclesfield* at *Kensington*, and acquainted her that I was the Person my Lord had promis'd the Office to, desiring her to intercede with my Lord that I might be immediately sworn. Her Ladyship said, she never medled in any publick Affairs. I used several Arguments with her, that it was now publick, and might affect my Character, if not admitted. I laid great Stress on these Arguments, and acquainted her, I did not expect to come in without the due Present. Then I repeated those other Arguments, whereby her Ladyship was prevailed upon to promise she would write, and acquaint my Lord Chancellor with it. Before I went away, I left upon the Table Bank-Notes to the Value of 5250 l.

Serj. *Peng*. How directed?

Thurst. To the Countess of *Macclesfield*.

Serj. *Peng*. How soon after this was he admitted?

Thurst. Within two or three Days.

Serj. *Peng*. Who was his Predecessor?

Thurst. Mr. *Borret*.

Serj. *Peng*. What was the Deficiency of the Office to the Suitors, not answer'd by Mr. *Borret*'s Effects, when it came into your Hands?

Thurst. I can't possibly answer that, because I never had those Accounts under my Inspection; and I don't find the Gentlemen who have, can give an Account of it.

Serj. *Peng*. Whether there was a Deficiency? and about what Sum?

Thurst. I do not know any Thing about it.

Serj. *Peng*. Whether there were Effects sufficient to answer the Suitors Demands?

Thurst. I cannot tell, because there was no particular Account taken of it, that came to my Knowledge.

Serj. *Peng*. Whether the Suitors have been paid the Money left in *Borret's* Hands ?

Earl of *Maccl*. If there be any Order of Court for their being paid, they may produce that Order.

Serj. *Peng*. I don't speak of Orders ; only whether he knows that the Suitors have been paid.

Thurst. 'Tis impossible for me to know it, having had no Inspection of those Accounts.

Mr. *Lutw*. Whether any Effects or Money, and to what Value, have been transferr'd to him as the Effects of Mr. *Borret* ?

Thurst. About 4200 *l*.

Mr. *Lutw*. Whether he knows what the Cash was, that was in Mr. *Borret's* Hands ?

Thurst. No.

Serj. *Peng*. Whether he has been applied to by any of the Suitors, upon Account of Money deposited in Mr. *Borret's* Hands ?

Thurst. I can't say Nobody has apply'd : Several Suitors, or their Representatives, have been inquiring after such Things, who have been satisfied with such an Answer, as the present Circumstances would furnish. There was Interest-Money paid before this broke out, to the Suitors, who were represented to me as People in Necessity, to the Amount of 3 or 400 *l*. When this broke out I desisted Payment, upon the Advice of a great Friend.

Mr. *Lutw*. I desire he would explain himself, what he means by saying before *this* broke out ?

Thurst. I mean the Inquiry made into the Master's Accounts, by his Majesty's Direction in Council.

Mr. *Lutw*. The Money he paid, who he received it from ?

Thurst. From Mr. *Godfrey*, the Master in Chancery.

Mr. *Lutw*. Whether he knew of any Administration taken out to Mr. *Borret*, and at what Time ?

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Thurst. I believe Mr. Godfrey and Mr. Bennet were desir'd by the Lord Chancellor to look into Mr. Borret's Affairs, which they did, till they were discouraged from it by the Enquiry that was set on Foot. They tell me now, Administration is granted to Mr. Paxton.

Serj. Peng. Since he paid the Interest, why he did not pay the Principal?

Earl of Maccl. I believe it would save your Lordships Time, if Mr. Serjeant would ask his Questions in such a Manner, as not to imply something which was not admitted or said by the Witnesses: The Question supposes a principal Sum demanded; the proper Question is, If any principal Sum was demanded, and whether it was or was not paid?

Serj. Peng. I apprehend Mr. *Thurston* says, the Suitors came to him, and he would not pay any more than the Interest; and that they came to him for the Money lodg'd in the Hands of Mr. *Borret*. Whether any of those Persons that demanded their Money were paid?

Earl of Maccl. Whether any demanded the principal Sum? and by what Order?

Serj. Peng. I desire to ask my own Questions; I apprehend I am not to be directed by the Lord impeached. What Suitors applied, and what Sums they demanded?

Thurst. The Suitors Names I can't remember, I believe 'tis not necessary. The Sums demanded were only Interest-Money. The Principal, of which I paid the Interest, to my Remembrance was 700 l. There was no Demand of Principal. There might, I believe, be Inquiries made by a Noble Peer after what I could not inform him of.

Mr. Plumm. Why or by whose Advice he desisted paying?

Thurst. Upon a prudential Reason, because I did not know how far I might be affected, and made answerable for it, upon the publick Inquiry.

Mr. Plumm. Whether he suspected any Deficiency in Mr. *Borret*'s Office?

Thurst.

Thurst. There was a Suspicion that there was not Money to satisfy all.

Mr. Lutw. Whether there was not an Order for transferring the Effects in Mr. *Borret's* Hands to him?

Thurst. Upon the Admission of every Master there is an Order of Course, to transfer the Effects to the Successor.

Mr. Lutw. If such Order came to him?

Thurst. There did.

Mr. Lutw. Was there a Transfer accordingly?

Thurst. Not a compleat Transfer?

Mr. Lutw. Why was it not as usual?

Thurst. Because it was impracticable, there being no Representative of my Predecessor.

Serj. Peng. Whether he was not applied to by a Noble Peer, concerning some Effects deposited in *Borret's* Hands? And what Account he then gave him of the Office?

Earl of Maccl. What is it to me what this Gentlemen said? He is upon his Oath to give Account of what he knows: But to ask him what he said at such a Time, to affect me, I hope they will not insist upon.

Serj. Peng. When he has declar'd what he said, then the Question will be, whether that was true in Fact: And that Question will affect the impeached Lord.

Earl of Maccl. He should not ask an improper Thing, because he will ask a proper Question afterwards.

Serj. Peng. We apprehend it proper Evidence that he gave such an Account of the Office to the Noble Lord: Therefore I desire to know what Account he gave that Noble Lord?

Earl of Maccl. I desire your Lordship's Judgment, whether he is to ask what this Person said?

Mr. Lutw. I believe the same End may be obtain'd by asking, Whether or no he had any Reasons to think there was a Deficiency in his own Office, and what those Reasons were?

Mr. *Strange*: What his private Opinion may be is no Evidence. He and another may think variously of the same Matter. They are to ask him as to Fact, and not to his Opinion.

Mr. *Plumm*. Surely, when your Lordships are examining a Person to the Deficiency in his own Office, none can give a better Account than himself. I desire he would answer what he knows, whether he had the compleat Money of Mr. *Borret*'s transferr'd to him?

Tburst. The compleat Money of the Office hath not been transferr'd to me for Want of an Administration.

Sir *W. Strickl*. Whether on his Admission into that Office, he did not find a great Confusion in it?

Tburst. All Papers that came in my View were very regular, and well adjusted to dispatch Business upon.

Sir *W. Strickl*. Whether if he had known the State of this Office, he would have given 5000 Guineas for it?

Tburst. If I had known the State of the Office, and the Consequences of it, as appears at this Time, I would rather have given 5000 *l.* to have been without it.

Serj. *Prob*. Of the Money he paid or left on the Lady *Macclesfield*'s Table, I desire to know if he receiv'd any of it back again?

Tburst. I receiv'd back again from the Lady *Macclesfield* 3250 *l.* in the same Bank-Notes.

Dr. *Sayer*: Do you know the particular Circumstances of that Transaction, and upon what Occasion the Money was return'd? Give a full Account of that whole Transaction.

Tburst. Soon after my Admission, and as soon as I had adjusted the Affairs of my Office, I went into the Country. The Servant I left in Town sent me Word that there were several Messages from my Lord Chancellor, that he suppos'd might be of Importance. I return'd to *London*, and in a Day or two went myself to my Lord Chancellor's House. They said the Message was from my
Lady

Lady Macclesfield. Upon that I immediately after waited upon her Ladyship. She inform'd me then, that she did not know I had left so large a Present with her; and declaring I should be used with Honour, she return'd to me 3250*l*. and the other Part she said she would appropriate to her own Use.

Serj. Prob. Was any Notice taken of any Order or Directions from my Lord Chancellor about Repayment of the Monies, or was it only a Transaction between him and my *Lady Macclesfield*?

Thurst. There was no Notice taken of any Orders from my Lord Chancellor; rather an express Desire, that he should never be acquainted with it.

Mr. Strange: When was this Money restor'd?

Thurst. About the middle of *October*.

Mr. Common Serj. Whether he laid the Bank-Bills on *Lady Macclesfield's* Table before he receiv'd an Answer, or afterwards?

Thurst. To the best of my Remembrance, at my coming away.

Mr. Common Serj. Were they inclos'd in a Paper?

Thurst. They were inclosed in a Paper and seal'd up.

Mr. Common Serj. Whether they were open'd during the Time he was there?

Thurst. No.

Mr. Common Serj. Or taken up by my Lady during that Time?

Thurst. No.

Mr. Common Serj. Whether he named the particular Sum to her Lordship?

Thurst. No; I did not give the least Intimation what Sum was inclosed.

Mr. Strange: Whether he can remember that my Lady did, or did not open it, before he went away?

Thurst. To the best of my Remembrance it was not open'd before I went out of the Room.

PROCEEDINGS against the

Mr. *Strange*: Whether he apprehended that my Lady *Macclesfield* was acquainted with the Contents till after he was gone?

Thurst. I did not.

Mr. *West*: Whether he apprehended he should have been admitted if he had not left the Money?

Serj. *Prob*. We submit to your Lordships, whether that be a fair Question.

Mr. *West*: I think it is, upon the Foundation of the Question ask'd before, which was, whether he apprehended my Lady knew what he had left? I ask whether he apprehended he should have been admitted, if he had not left that Sum?

Thurst. I do not apprehend, if I had come without the Money, I should have been admitted. But if the Notes had been return'd me without any other Answer, then I should fully have apprehended I should not have been admitted.

Sir *John Rushout*: Whether he had any particular Acquaintance with the Lady *Macclesfield* before?

Thurst. I had not that Honour.

Sir *John Rusb*. Whether he had ever seen her, or been in her Company before?

Thurst. I believe I never was.

Sir *John Rusb*. What he apprehends was the Reason of 3250 *l.* being return'd to him?

Thurst. So far as I could collect from the Lady's Discourse, the Reason was, she thought it too large a Present.

Serj. *Peng*. In what Month was the 3250 *l.* return'd?

Thurst. In *October*.

Serj. *Peng*. In what Time of the Month?

Thurst. About the Middle.

Dr. *Sayer*: Whether the Return of this Money was before or after the then first Seal before *Michaelmas-Term*?

Thurst. It was before the first Seal.

Serj. *Prob*. Whether there was any Message sent about the Returning of the Money, before the Return was made?

Thurst.

Thurst. Several Messages past while I was in the Country.

Mr. Robins: When he waited on my Lady *Macclesfield* after his Return out of the Country, whether she mentioned to him the Reason of the Messages?

Thurst. She said it was to return the Money, Page 51. which was too large a Present, and she was afraid my Lord Chancellor should come to the Knowledge of it.

Serj. Prob. When he went to *Kensington* to my Lady, where was my Lord *Macclesfield*?

Thurst. My Lord was engaged in the Court of Chancery at the latter End of the Sittings or first Seal after *Michaelmas-Term*.

Serj. Prob. In what State of Health was my Lord Chancellor at that Time? Had he not continued some Time before at *London*, and not at *Kensington*?

Thurst. My Lord Chancellor, by the Enquiry I made, was at that Time in *London*.

Serj. Prob. How soon after your Admission did the Lord Chancellor go into *Oxfordshire*?

Thurst. The very Day after my Admission, as I was inform'd.

Mr. Cottingham again call'd.

Mr. Cottingham
call'd again.

Serj. Peng. Whether upon the Proposal made to him by *Mr. Thurston*, he acquainted my Lord *Macclesfield* with it?

Cott. I acquainted my Lord Chancellor with the Proposal of 5000 Guineas.

Serj. Peng. Did he approve of it, or reject it?

Cott. I am not very certain: But, according to my Apprehension the Earl seem'd to approve of it.

Serj. Peng. Whether he receiv'd any Thing for my Lord's Use upon *Mr. Thurston's* Admission?

Cott. I receiv'd nothing but my own Fees.

Serj. Peng. Whether he receiv'd any Directions from my Lord, relating to his Receiving, or not Receiving, any Thing from him?

Cottingb. The Earl told me, he had a Design to give that Place to *Dr. Sayer*, but he was at that

that Time at *Durham*. He proceeded to order me, to take no Money of Mr. *Thurston*.

Serj. *Peng*. When?

Cottingh. Very soon before he was admitted.

Serj. *Peng*. We submit this as Evidence of the Lord's knowing of the 5000 Guineas.

Mr. *Lutw*. Whether my Lord *Macclesfield* had any Acquaintance with Mr. *Thurston* before this Proposal?

Cottingh. I believe he had not.

Mr. *Plumm*. Whether he made any Difficulty of Accepting his Fees on Mr. *Thurston*'s Admission?

Cottingh. Yes; I did.

Mr. *Plumm*. Why.

Cottingh. The Earl order'd me to take no Money of him. Upon that general Order I made a little Difficulty, and told him of it. His Answer was, Why should I make any Difficulty, when he had been thus generously dealt with by my Lord Chancellor.

Sir *Will. Strickl*. Whether it was not a Day or Two before his Admission, that he first mentioned the 5000 Guineas?

Cottingh. A Day or Two before his Admission.

Serj. *Prob*. Whether that was a real Compliment to Dr. *Sayer*? Or whether Dr. *Sayer* made any Application; or was to give any Thing for it?

Cott. I believe, if Dr. *Sayer* had been in Town, my Lord would really have made him a Compliment of it without any Present. Dr. *Sayer* was his particular Friend.

Mr. *Plumm*. If he thought my Lord gave it to Mr. *Thurston* for nothing?

Cott. I did not apprehend my Lord so well acquainted with Mr. *Thurston*, as to give it him for nothing.

Dr. *Sayer*: Whether he did not represent to the Earl a Necessity for the immediate putting a Master into the Office, for the Dispatch of Business?

Cott. I did. For several Practisers had been with me about their Affairs in that Office, and otherwise

therwise the Business might be transferr'd to another Office. Upon that the Earl said, Mr. *Thurston* should be admitted.

Serj. *Prob.* Whether you had not Application from the Suitors themselves? And whether there was not a Clamour from them on Account of the Stop it put to Business?

Cott. Yes, there was. It happen'd to be in the long Vacation: And something, I told the Earl, must be done; there was an absolute Necessity to come to some Resolution.

Serj. *Peng.* In this Article, as an Aggravation, 'tis alledg'd Mr. *Borret* died insolvent. We shall call some Witnesses to the State of the Office at his Admission, and at his Death.

Mr. *Meller* call'd.

Mr. *Meller*
examin'd.

Serj. *Peng.* We desire Mr. *Meller* may be ask'd, What Sums he deliver'd over to Mr. *Borret*, at his coming into the Office?

Mell. About 120000*l.* I refer my self to the Account given in and sign'd.

Serj. *Prob.* We submit it, whether 'tis regular to examine to an Account *viva voce*, which has been reduc'd into Writing. Page 52.

Serj. *Peng.* Surely the Witness may use his own Papers to refresh his Memory.

*A Witness may
use his own Pa-
pers, to refresh
his Memory.*

Earl of *Maccl.* I do not know what these Gentlemen intend. They are reading a Charge against Mr. *Borret*, to shew what was deliver'd over to him, when he came into the Office. Is it expected, I should be able to give an Account what was paid to or by him, while he was Master? or what his Estate and Effects are? Or if there was sufficient to pay in his Hands, or not? If these Gentlemen had any Order of Court in which this had been fixed and settled, that might have been something. It is impossible for me to enter into it—— He died Intestate; Administration was not granted till very lately: What Account hath been taken of his Effects I do not know, or can any Way shew. They begin with an Account which is not a proper Evidence, as against me, to prove that this Gentleman had not Effects

Effects sufficient to answer the Demands upon his Office.

Serj. *Peng.* This Evidence relates to an Account deliver'd in by the Approbation of the Lord impeach'd to the Lords of Council, so far it is a proper Evidence, and a Foundation for farther Inquiry, how much of it remains in the Office: We shall ask other Questions as to the Deficiency. This is only to shew the gross Sum at first transferr'd to him.

Earl of *Maccl.* If they mean only to satisfy your Lordships Curiosity, by shewing how great a Sum there was in that Office, I think it is of no great Importance.

Mr. *Lutw.* All we endeavour to prove now, is, that at Mr. *Borret's* Death there was a great Deficiency, and that he died insolvent; and the Earl goes a great Way in this Matter in his own Answer. He says, on *Borret's* Death, he desir'd Mr. *Godfrey* and Mr. *Bennet* to inquire into his Effects, to enter a *Caveat*, and to obtain Administration for the Benefit of the Suitors. This goes a good Way to shew, that some Steps were taken which are unusual in Case of a Man's Solvency. Therefore we would ask, What he knows concerning the Deficiency in this Office, or give an Account of such Circumstances as may induce your Lordships to believe there was such a Deficiency.

Mr. *Common Serj.* If the Managers think fit to rely upon our Answer, they may do it.

Mr. *Solicitor General:* I think Mr. *Meller* hath prov'd that he transferr'd 120000*l.* to Mr. *Borret*. We will now prove the Deficiency.

Mr. *Common Serj.* Mr. *Meller* hath spoke *viva voce*, in what we apprehend is capable of better Proof: Therefore we hope it shall not go for Evidence. There must have been a Schedule, and he has the Counterpart, by which the Effects were deliver'd over.

Lord *Trevor:* Mr. *Meller* has a Paper in his Hand. I desire to know what it is?

Meller:

Meller : 'Tis the very Account of the Money deliver'd to Mr. *Borret*, and the Times when. It is by Way of Schedule. There is another Paper by Way of Abstract. I drew them together when I deliver'd it to the Judges. I had not Time to draw out the full Account, and therefore I made an Abstract; both which are sign'd.

Earl of Maccl. The noble Lord ask'd the Question exceeding proper; what this Paper was? Perhaps 'tis the very Account Mr. *Borret* and he made up between them and sign'd. I ask therefore, Whether it is the Account between them, or of his own Drawing up since?

Meller : 'Tis the Account I drew up from my Books, of which Mr. *Borret* had a Duplicate. I verified all these *Items*, and prov'd the Payment by Notes.

Mr. Solicitor Gen. This is as full Evidence as can be.

Serj. Prob. We submit it, whether this is proper Evidence. It is not the Original Account deliver'd: It is not the Book, but a Copy of the Book taken out, and given in Evidence in another Place. Now he would by this Evidence, sign'd by himself, charge Mr. *Borret* with Money deliver'd over to him: But as it is an Account only sign'd by Mr. *Meller*, we submit it, Whether it can be a Charge upon *Borret's* Representative, and consequently any Evidence at all?

Serj. Peng. We beg Leave to insist upon it: When a Person makes up an Account of his own Hand-writing, and swears to it upon his own Knowledge, whether this is not proper Evidence?

Earl of Maccl. This Gentleman has really given his Evidence, though 'twas objected to. 'Twill be a proper Inquiry hereafter, when we come to consider the Evidence, whether it be a good Proof of what it was brought for.

Dr. Sayer : We reserve our Objection.

Mr. Solicitor Gen. They may reserve what Observations they please. 'Tis an Objection to be made now, or not at all.

Lord Lech-

Lord *Lechmere*: It would prevent mis-spending Time, if the noble Lord would distinguish between *Objections* and *Observations*. A great Deal of Time has been taken up in *Observations*, which are proper afterwards on the Defence.

Mr. *Thompson*
examin'd.

Mr. *Will. Thompson* call'd.

Serj. *Peng*. Mr. *Thompson* was one of the Gentlemen, who, by Consent, did examine the Accounts of the Masters: And we beg Leave to ask him, what appear'd to be the Deficiency upon Mr. *Borret's* Account?

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Earl of *Maccl*. If it does appear by those Accounts, they may be produc'd, and your Lordships may judge: But I beg, they may not insist upon his Opinion, to affect me with his Inferences upon them.

Mr. *Solicitor Gen*. The original Accounts are here on the Table. It will be proper to examine him as to that.

Mr. *Plumm*. They object to this Evidence, as if your Lordships were going to try how the Deficiency was made up; whereas 'tis only, whether there was a Deficiency.

Earl of *Maccl*. If the Accounts are here, and he only declares his Observations on them, to save trouble, I have no Objection to it.

Serj. *Peng*. Upon stating the Account, what appears to be the Deficiency?

Thomp. I have it in my Hand, sign'd with my Name: By which appears, that Mr. *Meller*, at several Times, paid Mr. *Borret* 120000 *l*. That Mr. *Borret* paid the Suitors 77485 *l*. And the Charge remaining on Mr. *Borret's* Office is 42515 *l*.

Dr. *Sayer*: Whether any Executor or Administrator of Mr. *Borret* was present?

Thomp. When we examin'd the Accounts we understood, there was no Representative of Mr. *Borret*; and I think it is in the Report we could get no Account, but from his Clerk, Mr. *Godfrey* and Mr. *Bennet*, two Masters in Chancery.

Mr. *Common Serj*. What Books he form'd those Accounts from?

Thomp.

Thomp. The Charge from Mr. *Meller* on Mr. *Borret*, from Mr. *Meller*'s Account. The 77485 l. paid out, was from Mr. *Borret*'s Books, made up by his Clerk, under the Inspection of Mr. *Godfrey* and Mr. *Bennet*.

Mr. Common Serj. Whether he himself knew those to be Mr. *Borret*'s Books, or only by Relation from other Persons?

Thomp. Only by Relation from his Clerk.

Mr. Common Serj. They must go further before the Balance can be taken Notice of: They must establish that these Books are Mr. *Borret*'s.

Mr. Solicitor Gen. We have done with Mr. *Thompson*.

Serj. Peng. We hope the Counsel for the Earl impeach'd, will read his own *Answer*, wherein he owns Mr. *Godfrey* and Mr. *Bennet* were imploy'd by himself to take the Effects of Mr. *Borret* into their Custody.

Earl of *Maccl.* Mr. *Thompson* says the Charge is taken from the Account given by Mr. *Meller* himself. Whether Mr. *Meller* was not call'd upon to discharge himself of the Money he had in his Hands, before he surrendered to Mr. *Borret*; and whether that was not the Occasion of his being there?

Thomp. Mr. *Meller* was sent for, to know the State of the Office, when he left it.

Earl of *Maccl.* So he gave an Account how it stood at the Time of Quitting the Office, and what he paid over to Mr. *Borret*?

Thomp. He did so.

Serj. Prob. Whether the 77485 l. Discharge was taken from the Relation of Mr. *Godfrey* and Mr. *Bennet*, or from the Books, or whether he examin'd the Books?

Thomp. I went through every particular of Mr. *Meller*'s Account; as to the other I cannot answer particularly.

Earl of *Maccl.* Whether they did not report, they could not take the Accounts perfectly, for Want of an Administrator?

Thomp.

Thomp. I believe if the Report is turn'd to, it will appear so. I don't mention these Sums as an exact Account; they were the best we could get.

Dr. Sayer: Whether the 120,000*l.* which lies as a Charge on Mr. *Borret's* Office, is not the Account Mr. *Meller* is to discharge himself by, and of those Effects for which he otherwise remains responsible?

Thomp. How far Mr. *Meller* is to discharge himself I am no Judge. This is the Account the Office stood charg'd with.

Dr. Sayer: Whether it is the Account of Mr. *Meller*, as Predecessor to Mr. *Borret*?

Thomp. It is so.

Mr. Plumm. Whether Mr. *Meller* did not produce Receipts for Mr. *Borret* for this whole Account?

Thomp. Mr. *Meller* produc'd Vouchers for every Article.

Serj. Prob. Whether there were Proofs made of the Vouchers?

Thomp. What the Gentleman means by Proofs, I don't know. They were Receipts under Mr. *Borret's* own Hand for the whole Sum.

Mr. Common Serj. Whether he is acquainted with Mr. *Borret's* Hand-Writing, or whether there was any Proof made of it?

Thomp. Mr. *Borret's* Clerk affirm'd every Receipt to be Mr. *Borret's* Hand-Writing.

Mr. Common Serj. Was any Oath made, or was it only upon his Word?

Thomp. I can't say whether Mr. *Borret's* Clerk was sworn or no: I think he was; I don't find it in the Report.

Mr. Lutw. This Report that is sign'd by him as one of the Committee, Whether it was laid before the Council, and to whom deliver'd in?

Thomp. This very Report was deliver'd by Mr. *Baron Gilbert* to the Committee of Council.

Earl of Maccl. I hope it is the same that is before your Lordships; if it is not I can't tell what to say to it.

Serj.

Serj. Peng. This is the original Report; a Copy is on the Table.

Earl of Maccl. I desire it may be deliver'd in, and lye on the Table.

Mr. Godfrey call'd.

Mr. Godfrey examin'd.

Mr. Sol. Gen. Whether upon the Death of *Mr. Borret*, he was directed to take an Account of the State of the Office?

Godf. Upon the Death of *Mr. Borret*, my Brother *Bennet* and I were desir'd by my Lord *Macclesfield* to look into the Affairs and Accounts of *Mr. Borret*; and likewise to see what Securities were in the Funds. I went to the *Bank*, and found there in *Mr. Borret's* Name 1000*l.* in 5*l.* per Cent. Annuities; 1000*l.* *Bank-Stock*; then I went to the *East-India House*, and there was 240*l.* *East-India-Stock*. This was all the Account I took. *Mr. Bennet* went to other Places.

Mr. Sol. Gen. In what State was the Office in general?

Godf. I did not see the Office Books; *Mr. Bennet* took that Charge upon him: He is capable of giving you an Account. But upon my talking with him about it, he found more Stock and Security in *Mr. Borret's* Name in the several Funds, than was charg'd in the Office Books.

Serj. Peng. When *Mr. Thompson* and the other Gentlemen enquir'd into the particular Effects, whether, when he appear'd there the Account he gave in was a true Account?

Godf. In relation to *Mr. Borret's* it was.

Mr. Sol. Gen. Whether it is usual to enquire into the Effects of a Predecessor, unless there is a Reason to suspect a Deficiency?

Godf. I don't know whether 'tis usual, but 'tis extreamly necessary. When this Gentleman was expiring in such an Office, having no Friends in Town, nor intimate Acquaintance besides my self, to take care of his Effects, I thought I ought to do it; and that was the only Reason induced me to take Care, that they might not be imbezill'd.

Serj. Peng. Whether they did not find the Office in great Confusion?

Godf.

Godf. At his Chambers in the *Temple* we found his Papers in great Confusion. We collected them as well as we could, and what we found of Value were seal'd up in a Bag, by Mr. *Bennet* and myself, Mr. *Grant* (Mr. *Borret's* Wife's Father) and Mr. *Grant* the Clergyman (her Uncle) and they are now in a Trunk, lock'd up, at my House.

Sir Will. Strickl. Whether the next of Kin did not refuse Administration, because of the Deficiency?

Mr. Common Serj. Here can be no Answer but Yes, or No. I hope Gentlemen will not ask such Questions.

Earl of Maccl. Whether any Advice was given, concerning Administration?

Godf. Mr. *Grant* the Uncle said, he was a Creditor by Bond, between 6 and 700*l.* which I was surpriz'd to hear; not thinking Mr. *Borret* owed a Shilling: And being so great a Creditor, he thought, if he administred, he should be paid first. I told him, as Mr. *Borret* had been in a great Office, I could not tell how Matters stood; and if there should prove a Deficiency, he would involve himself in taking Administration, more than he was aware of.

Sir Will. Strickl. If he did not apprehend there would be such Deficiency?

Godf. I did not at that Time apprehend any. He had been in the Office about four Years, and had Opportunities of reimbursing himself: He had a handsome Fortune when he came in, and had with his Lady 3000*l.*

Earl of Maccl. Whether he was well acquainted with Mr. *Borret* and his Circumstances?

Godf. I have had some Years Acquaintance with Mr. *Borret*: I was not perfectly acquainted with his real Estate; but by Relation he had 400*l.* a Year, or better.

Earl of Maccl. Are you acquainted with his personal Estate?

Godf. No.

Earl of *Maccl.* What he said to me after Mr. *Borret's* Death; whether there would be a Loss in *Borret's* Office?

Godf. I can't remember the Discourse; I believe I might say, and it was my Opinion, that there would be no Deficiency. I have heard his Estate was such, and I knew his Lady's Fortune was so much, and that he dispos'd of his Place of Filazer of *Yorkshire*, for which I am inform'd he had 4200*l.* These Reasons induced me to believe there would be no Deficiency: And I knew very well, Mr. *Borret* liv'd at no extravagant Rate; for I'm sure, all the Time he was a Master, and in Town, he never spent 200*l.* a Year. Page 55;

Sir *Will. Strickl.* Does he not know, the Estate was settled on his Family and Children?

Godf. I have heard some Part of it was settled upon his Marriage; but whether all, or not, I can't tell.

Earl of *Maccl.* How came you to imagine, that he spent no more than 200*l.* a Year?

Godf. He told me so.

Earl of *Maccl.* Where was his Family?

Godf. In the Country, with his Lady's Father: And in Town he had private Chambers in the *Temple*, and only kept one Servant and one Horse.

Earl of *Maccl.* Whether he did not once intend, and take some Steps himself, towards taking Administration to Mr. *Borret*?

Godf. I had so great a Concern for the Office, and the Securities not being transferr'd to a proper Hand, that I was willing to administer, rather than there should be any Clamours of Neglect of Business: But, upon Consideration, did not apprehend my self a fit Person. I was not very young, and had two young Children: And I apprehended, if I should drop before Things were settled, the Case might be still the same as I found them. Therefore, I desir'd to have somebody join'd with me, foreseeing a deal of Trouble in it. However, I said, I was willing to engage if my Brother *John Bennet* were join'd with me, rather than there should be a Clamour upon the

Office: And I persuaded him to do the same, and went to the *Commons*, to see if Administration could be granted to us two. The Relations in the Country, and those concern'd for them, were willing: And accordingly Process was sent, and Sentence given. But then this unhappy Enquiry coming out, we knew not what Situation we were in; and for that Reason I declin'd it.

Earl of *Maccl.* Has Mr. *Borret* a Wife living?

Godf. She died a Month before him.

Earl of *Maccl.* What Age are his Children?

Godf. The eldest is about three Years old, and the youngest about two.

Mr. *John Bennet*
examin'd.

M. John Bennet sworn.

Sir *Will. Strickl.* Whether he did not, upon the Enquiry into Mr. *Borret's* Office, apprehend there was a Deficiency?

Benn. I heard it reported there would be a great Deficiency, at the Time I was desir'd by my Lord *Macclesfield* to look into it; I was likewise inform'd soon after, that there was like to be no Deficiency.

Sir *Will. Strickl.* How he found it?

Benn. In the utmost Confusion. His Accompts mostly in loose Papers. There was one Book, but it extended no farther than the *Christmas*, which was about three Quarters of a Year before his Death; Mr. *Godfrey* desir'd I would join with him in taking out Administration; which I did.

Sir *Will. Strickl.* Whether he did inform the Earl of *Macclesfield*, there was like to be no Deficiency?

Benn. No: But I did inform him, there was not so great a Deficiency as was reported. I could make no regular Computation; every thing was in Confusion.

Earl of *Maccl.* Whether he did not inform me, that he found more Stock in *Borret's* Name in the Books of the several Companies, than he could find charg'd in the Office?

Benn. Not to my Remembrance; for I did not look into the Stocks; that was Mr. *Godfrey's* Business.

Earl

Earl of Maccl. You then look'd into his Books?

Benn. I did so.

Earl of Maccl. Upon your looking into his Books, and Mr. *Godfrey* into the Companies, and comparing them together; whether you did not take more to be in his Name, than was charg'd in the Office?

Benn. Upon Mr. *Godfrey's* Accompt there appear'd to be more Stock in his Name, than he was answerable for to the Court.

Earl of Maccl. He has said he could not tell what the Deficiency would be, because he could not make up a regular Account; whether he did not tell me, he believed there wou'd be no Deficiency?

Benn. No.

Earl of Maccl. Did you not, upon your Oath?

Benn. After Mr. *Borret's* Death I did say to several, when they were clamourous (but whether to my Lord *Macclesfield* I can't tell) there would be a Deficiency of 4 or 5000*l.* and I believed not more.

Mr. Common Serj. Whether he did not examine at the Exchequer?

Benn. Yes.

Mr. Common Serj. Whether he did not tell Mr. *Godfrey* afterwards, there would be no Deficiency?

Benn. No.

Mr. Plum. Mr. *Bennet* has said, upon comparing the Books, he found more Stock in Mr. *Borret's* Name, than was charg'd to the Court. I desire he may be ask'd, if he found more Stock than the Money and the Effects he was charg'd with to the Court?

Benn. No; the best Calculation I could make was, that there was near 4 or 5000*l.* deficient.

Serj. Peng. We shall leave this Article, with this Observation, that Mr. *Borret* died insolvent, and a Debtor to the Suitors of the Court, and that Mr. *Thurston* was admitted into that Office by the Earl impeach'd, without procuring Satisfaction to the Suitors or Security for their Debts.

Mr. Onslow opens the Eleventh Article.

Mr. Onslow. The Commons having made good that Part of their Impeachment, by which the Earl stands *charg'd* with extorting many great and extravagant Sums of Money for the Admission of several Masters in Chancery into their Offices: We now proceed to support the *Eleventh* and *Twelfth* Articles, which contain many corrupt Practices used by the said Earl, to advance and encrease the illegal Gain arising to him from the Sale and Disposal of those Employments.

The *Eleventh* charges him with admitting several Persons to those Offices, who at the Time of their Admission were of *small Substance* and *Ability*, and unfit for so great a Trust, as by the Nature of their Employments was to be plac'd in them.

The Masters in Chancery have of late been the *Treasurers* of that Court. The *Repository* of the Money and Effects brought into Court, not by Consent of the Parties concern'd, but by the *Compulsion* of the Court, under the Faith of better Security: But this pretended Security has serv'd only to *delude* the Suitors into a false Quiet, whilst their Estates have been made a Prey to infamous *Stock-jobbers*, and *wasted* by some, to support the Extravagancy of their living.

The Fortunes of *Orphans* and *Lunatics* are a Part of the Care of the Court of *Chancery*; and have been lodg'd in the Hands of the Masters, till the Owners are capable of managing their Estates. When they came to require their Fortunes, He, who was the *supreme Judge* in a Court establish'd for their Relief, and their great *Guardian*, will be found to have *suffer'd* Advantage to be taken of the *Weakness* of the one, and *Misery* of the other, to render their *helpless Condition* a Means of their Ruin, instead of their *Protection*.

This is the Nature of the *Trust* repos'd in Masters in Chancery, and this the *Use* they have been permitted to make of it. The *Greatness* of the Trust will shew what Precautions a Lord Chancellor ought to have taken, as to the Officers admitted into these Employments; and the *Abuse* of

of this Trust will demonstrate how little His *Care* has been; who, unfortunately for the Suitors, and to the Dishonour of the publick Justice of the Kingdom, *presided* seven Years in the Court of *Chancery*; in which Time a *Deficiency* of above Fourscore thousand Pounds, has happen'd; and of the Six Masters on whom there appear'd to be a Deficiency, four of them were admitted by *Him*. If our Evidence, as to this Article rested only on the Proof of these Deficiencies, it would be sufficient to evince what the Commons have alledged, that Persons of small Substance, and Ability, have been by the *Earl* at the Bar prefer'd to be Masters in Chancery. But to bring this Charge nearer to the *Earl*, we have it in Proof, and strongly so, that little or no *Inquiry* was ever made by him into the *Characters* and *Circumstances* of those he admitted into these Offices; no Security ever required. We shall shew, that they were entrusted, some of 'em with 40, 60, one of 'em I think with 100,000 *l.* in Cash and Securities. Yet no other Use was made of this, but to *enhance* the *Price* of the Office, when it was to be *sold*, and barter'd, for the Benefit of the *Earl*. The Argument used to bring up any Person to the *Rate* the *Earl* insisted on, was the Largeness of the Sum to be transferr'd to the Purchaser; and when the Price was thus agreed upon, no other Qualification was requir'd; the Person was thought proper to be associated to him in the Administration of Justice, and to be intrusted with the Fortunes of whole Families. How well the *Earl* consulted the publick Justice they were to assist him in; what Regard he has had for the Interest of those whose Estates he thus stung into their Hands, the Evidence will shew.

The Article concludes with a remarkable Declaration by the *Earl* of the Ability and other Qualifications of the Masters. A very honourable Person, then a Judge also in that Court, and now at the Head of it, having seen with Indignation the *Havock* of the Suitor's Effects, endeavour'd to put some Stop to it. An Order was made by him

on one of the Masters, to allow some Profit to a Suitor out of her own Money, which the Master design'd, as it was thought, to his own Use. The Master thought himself aggriev'd, and fled for Redress to his *Patron*, the Chancellor. The Order was immediately discharg'd: And then to obviate the Clamours from all People, the Earl did, in open Court, in his *judicial* Capacity, declare, that the present Masters were *Men of as great Probity, Fortunes, and Abilities, as any Sett of Masters ever were; and that he had the Satisfaction of putting in most of them himself.* This the Commons have laid, to be to the manifest *Deceit* and Injury of the Suitors; which they are justified in doing, by the Thing itself being *false*, by Proof that the Earl *knew* it to be false, and by the Resemblance it bears to that Series of other mean *Artifices* he had long been practising, to give a *counterfeit* Credit to *corrupt* Officers: A Credit he was soon to receive Benefit from; for a Vacancy of a Master happen'd the Day before.

This Article was the great Source of the Evil likely to befall the unhappy Suitors; and the Means he used to draw to himself those extravagant Sums we have prov'd: For Men of small Fortunes, as they have more Temptations, so they run less Hazard than others; and this encourages such Men to give exorbitant Rates for Employments.

The *Twelfth* Article will be open'd and enforc'd by the Gentleman after me: I shall therefore only make this one Observation, that as the Office of a Master is of great *Trust*, and these Officers are appointed by the sole Discretion of the Chancellor, and the Effects of the Suitors deposited in their Custody by his *immediate* Orders, which he might have placed in safer Hands, he becomes a *superior Trustee*, and is answerable to the Suitors for these Men; so may the Publick be thought answerable for him: Which makes his Guilt without Measure, who has thus brought a Disgrace upon his Country, by prostituting one of its highest Courts of Justice to his own *Avarice* and

and Corruption, to the Rapine of his Officers, and the undoing of those who have been forc'd into his Power.

Mr. Palmer: The *Twelfth* Article will lay before you a corrupt Practice, used without Controul, while the Earl was Chancellor, by which this illegal Gain was immensely increas'd; and whereby the Masters were enabled to buy their Offices at extravagant Prices.

Mr. Palmer opens the Twelfth Article.

Great Sums were paid for Surrenders and Admissions, and those Sums taken from the Suitors Money: Sometimes the Purchase-Money was borrow'd, but after Admission repaid out of the Cash; sometimes the Value was left in the surrendering Master's Hands. Whatever different Ways were taken at the beginning, they all tended to this; the Suitors were to make the Purchaser easy, and People were perswaded to bid high, by being told how easily the largest Sums could be rais'd.

A common Recommendation to a Purchaser, was to tell him how much Cash was in the Office; and that he need not be afraid to make any Contract good; Money would be ready, as soon as he was admitted. In Consequence of such Recommendations, Masters gave more than they were worth, the Suitors Money made good the Bargain; and these are the Masters, in whose Offices appear the greatest Deficiencies.

Mr. Kynaston, and Mr. T. Bennet procur'd their Places in this Manner. *Kynaston* discharg'd a Bond of 6000 *l.* by giving a Receipt of the same Value. *Bennet* gave a Receipt for 10000 *l.* Both acknowledg'd a Transfer of so much of the Suitors Money: The one receiv'd but 9 *l.* and the other 2500 *l.* The rest was kept back as Part of the Price, and is now a Part of their Deficiencies. *Bennet's* Deficiency is near 10,000 *l.* and *Kynaston's* is above 20,000 *l.*

This Practice the impeach'd Lord declares himself ignorant of: The Commons declare and will prove, that he knew, conniv'd at, and encourag'd it; that it was the Subject of his Discourse, and that

that he fear'd, and endeavour'd to prevent a Discovery of it.

He observes on the Accounts of some of the Masters, as given in on the Inquiry, that *they were given in in the worst Manner; that they should convince the World that they paid for their Places out of the Suitors Money; and that they would at last discover what he had always, when ask'd, taken care to deny.*

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He admits in his Answer, that he never caused any Schedules to be made of the Suitors Effects, to be transferr'd to succeeding Masters: That his Predecessors never did so before him; and that he thinks it not criminal.

The Commons Charge in general, that he knew the Abuse, and took no Care to reform it. If he had taken Care that the Suitors Effects should be transferr'd by Schedules: If he had appointed one to overlook the Transfer: If he had taken any Method to be assured that the Effects were accordingly transferr'd, perhaps he had not now appear'd so high this Bar.

But if he thinks he is justified, by saying it was not his Duty, and therefore the Omission no Offence, the Commons aver, it is the Chancellor's Duty to superintend the Masters and their Accounts: And it is submitted, whether he is not criminal, if he suffers the Money deposited by the Court in the Hands of the Masters, to be without Order, left in private Hands.

Serj. Peng. The Proof of these Articles will go to both promiscuously. In the first Place, we shew the several Orders of Court, which state the Deficiencies of several Masters.

Mr. Ral. Paxton sworn.

Serj. Peng. Whether the Papers produc'd are true Copies?

Paxt. They are. I examin'd them.

Several Orders of the Court read, viz.

Lords Com.

Ordo Curie Veneris 29

Jan. 1724. (relating to Mr. Conways Deficiency and his Commitment.)

Lords

Mr. Paxton
proves several
Orders of
Court.

Lords Com. *Ordo Curiae Mercur.* 3 Page 59.

Febr. 11 Geo. (relating to Mr. Tho. Bennet.)

Ordo Curiae, Mart. 19. Jan. 1724. (relating to Mr. Conway.) Page 60.

Ordo Curiae, Merc. 20 Jan. 1724. (relating to Mr. Kynaston.) Page 61.

Mr. Sol. Gen. These Orders shew, that those Masters were deficient. It will be incumbent on the noble Lord to shew, that when they were admitted, they were of proper Ability. We now proceed upon the Declaration made 21 Jan. was Twelve-month.

Mr. Waller sworn.

Mr. Waller
exam.n'd.

Mr. Sol. Gen. Whether he applied to my Lord Chancellor upon an Order made by the Master of the Rolls, relating to Mr. Conway; and what my Lord Chancellor said on that Occasion?

Waller: In July 1723. I had Directions from my Client, to apply to Mr. Conway, to lay out in South-Sea Annuities 4000 l. brought before him in a Cause between Mr. Davenant and Lord Cardigan. At first he told me, he would take Care of it. Upon further Application, he said, the Order had directed another Sum to be brought before him in the same Cause, and that he could not put out one without the other. Upon this I petition'd the Master of the Rolls, that Mr. Conway might be oblig'd to put out the Money immediately.

Serj. Prob. He is taking Notice of Orders, Petitions, and Acts of the Court, upon his Memory. We think these ought to be produc'd.

Mr. Sol. Gen. We have them all here. We only make Use of them to let in the Declaration of the noble Lord.

Earl of Maccl. If that be all the Use, there is no need to produce them: But if to introduce Evidence to the Merits of the Cause, 'tis proper to have them produc'd.

Mr. Sol. Gen. We don't dispute the Justice of the Order made, but ask the Occasion of it: And
all

all we desire is, what was declar'd, and the Occasion of it?

Serj. *Peng.* Whether a Man acts justly, that detains Money, when he ought to pay it out, we leave to another Determination. We ask now the Declaration of the Earl of *Macclesfield*, and the Occasion of it?

Wall. Upon the Petition to the Master of the Rolls, he order'd the Money should be put out, and the Master to pay some Interest. He applied to the Lord Chancellor to discharge the Order: Who said, *the Master was not to blame*; and that *the then Masters were of as great Probity, Ability and Fortune, as ever had been before*; and that *he had the Satisfaction of having put in most of them himself*; or Words to this Effect.

Mr. Sol. Gen. When was this? And where?

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Wall. Twenty-first of Jan. 1723, in Court, at my Lord's House.

Mr. Sol. Gen. Was any Master's Office vacant then? And how long before?

Wall. Mr. *Fellows* died a Day or two before.

Mr. Sol. Gen. Was there any Observation then made of any Persons taking Notice of what was said?

Wall. One of the Counsel took Notice of somebody taking Notes, and said, he believ'd it would be in the *Amsterdam Gazette*. My Lord ask'd, Who he was?

Earl of *Maccl.* What I said, when Application was made to me to complain of it?

Wall. I don't remember.

Earl of *Maccl.* Recollect your self, if I did not say, they had a Right to take Notes?

Wall. I don't remember any such Answer.

Serj. *Prob.* Whether he kept any Memorandum of the Words then said?

Wall. No.

Serj. *Prob.* How then he comes to remember the very Words?

Wall. It struck me with so much Astonishment, to hear such a Declaration made on the Masters, which

which most People thought they did deserve, that I could not but remember it.

Serj. Peng. We have several other Persons who were present when this Declaration was made: But it was so publick and notorious, and is so distinctly prov'd, that it will be unnecessary to call further Evidence.

Mr. Sol. Gen. To ascertain the Death of Mr. Fellowes we have one of his Servants here.

Edward Ange sworn.

Edward Ange
examined.

Mr. Sol. Gen. Whether he was Servant to Mr. Fellowes?

Ange: I was a Clerk in his Office, at his Death, and many Years before.

Mr. Sol. Gen. When did he die?

Ange: Jan. 19, 1723.

Mr. Sol. Gen. The Declaration was made the 21st. So it seems such a Declaration was wanting at that Time, to keep up the Price of the Office.

Mr. Lightboun call'd.

Mr. Lightboun
examined.

Mr. Sol. Gen. Whether he gave any Intimation to the Earl of Macclesfield, that the Circumstances of some of the Masters were suspicious, before the 21st of January was Twelve-month?

Mr. Lutw. What Discourse he had with him concerning the Masters?

Lightb. I can't say I acquainted him with my suspecting any of the Masters by Name: But I told him, as a Deficiency had happen'd in Dormer's Office, the like might happen in others; and that it might be proper for him to take some Measures to prevent the like.

Mr. Lutw. Had you any Discourse with the Chancellor in 1723, relating to the Circumstances of any of the Masters, or about any Security to be given by them?

Lightb. In 1723, my Lord sending for me to know why I had not complied with a Proposal of the Masters to pay 500 l. towards Mr. Dormer's Deficiency: I ask'd, whether it was his Proposal, or made from some of the Masters? My Lord said, it was mentioned by the Masters, and he approved

proved of it; and as the Rest had complied, he hoped I would.

Mr. Sol. Gen. You need not now give a particular Account of this. Whether had you any Conversation with my Lord before the 21st of *January* 1723, about the Deficiency of the Masters, and that there was Reason to suspect any?

Lightb. I did not mention any particular Person, but only that as an Accident had happen'd, it might happen again: I was far from mentioning any Master by Name; for I might thereby have made myself liable to an Action.

Mr. Sol. Gen. Whether he did not say, he had Grounds to suspect some of them?

Mr. Com. Serj. The Question first asked was in general; but the Answer not coming out to their Satisfaction, they now apply it to a particular Fact, to which the Answer required is only Yea or No. We desire the Questions may be asked in other Terms.

Mr. Sol. Gen. Whether he gave any Intimation in general, that there might be a Suspicion of the Masters?

Lightb. I did in general acquaint my Lord, as this Accident had happen'd, I did not know how soon it might happen again. The Year 1720 had made great Havock; and I did not know what Effect it might have had amongst us.

Serj. Peng. Whether he can recollect that he had any Discourse with my Lord to that Effect, at any other Time, before *January* 1723?

Lightb. I can't confine myself to a particular Time. I had many Conversations with him on this Subject; and what pass'd at one Time more than another, I can't remember. I have often heard him mentioning the Methods he thought of to prevent it, and propos'd such as I thought of, but I can't tell all the particular Times.

Serj. Peng. Whether it appear'd to him that the Earl had any Suspicion of a Want of Substance in the Masters?

Lightb. When I mention'd it, he seem'd unwilling to think so. He said, he hoped there was no

no Danger; they were all recommended for Men of Fortunes. This last Year, my Lord seem'd to think there was a Necessity of inquiring into this Affair: And when I told him, I question'd if the Masters were able to bring in their own Accounts; my Lord said, he hop'd and wish'd it.

Earl of *Abingdon*: If Mr. *Lightboun* be left to his own Discretion, to relate whatever he can recollect pass'd between him and Lord *Macclesfield* before *January* 1723, it may give fuller Satisfaction.

Lightb. I don't remember any particular Conversation about the Abilities of the Masters, further than I have mention'd. I did give some Hints in a doubtful Manner, but it would very ill have become me to have mention'd particular People.

Serj. *Peng.* Now we proceed to the Masters coming in, and in what Manner the Money was paid, and out of what Fund.

Mr. *Kynaston* call'd.

Mr. *Kynaston*
examined.

Serj. *Peng.* In Relation to his Treaty with Mr. *Rogers*, when he came into his Office; and in what Manner the Money was rais'd?

Kynast. In *May* 1721.

Mr. *Comm. Serj.* We hope they shall intimate, that they have Evidence to apply this to the Lord accused; otherwise a bare Discourse between Mr. *Rogers* and Mr. *Kynaston* can't affect the Earl.

Mr. *Lutw.* This Interruption is unnecessary. It is the first Part of the Article we are going to prove, that it was a Practice among the Masters, to pay for their Places out of the Suitors Money; and that though the Chancellor knew this, he applied no Remedy, but let it go on for his own Benefit. Therefore we begin with the first Part of the Article. They are not to ask, whether we have Proof of the latter Part. We are beginning with the first Part, and then shall bring it home.

Mr. *Sol. Gen.* We shall prove the Whole, that there was such a Practice, and that the Noble Lord knew or suspected it, and did not prevent it. We must first begin with the Practice.

Serj.

Serj. Peng. The Methods taken when he came into the Office, of selling and paying for them; and in what Manner the Agreement was transacted?

Kynast. I treated with Mr. Rogers for the Sale of his Place, in *May* 1721. I understood the Method was, that they retain'd so much of the Money belonging to the Office for their Places; and that such had been the Practice. I did agree to pay him 6000 *l.* for his Place. I went into the Country, and he wrote to me, that he design'd to resign the Place on the 9th of *August*. I came up to Town, and on the 9th of *August* gave him a Bond for 6000 *l.* Then I went with him to my Lord, and was sworn in Master. There was a general Order for him to deliver over the Effects and Securities to me: He deliver'd up the Bond, and retain'd so much Money belonging to the Suitors, as amounted to 6000 *l.* He paid me 9 *l.* and deliver'd up my Bond, and I gave him a Receipt for 6009 *l.*

Serj. Peng. What was paid for his Admission?

Kynast. 1500 Guineas were paid to Mr. Cottingham by Mr. Baily.

Serj. Peng. How was it repaid?

Kynast. In *February* afterwards I stated an Account with my Cash-keeper, and he charg'd me with the 1575 *l.* and deducted it out of the Money of the Suitors which he had receiv'd.

Serj. Peng. What Sum of Money came to his Hands from Mr. Rogers?

Kynast. Something above 20,000 *l.*

Serj. Peng. Whether any Person was present on my Lord's Behalf, to see the Effects deliver'd over by the Order of Transfer?

Kynast. No.

Serj. Peng. Was any Account demanded of him afterwards, by my Lord or his Agent, of the *Quantum* of the Effects?

Kynast. I don't remember there was.

Serj. Peng. Whether he had Money enough of his own, to pay Mr. Rogers 6000 *l.* for his Place, and 1500 Guineas to my Lord for his Admission?

Kynast. Yes, I believe I had more Money, but it was out upon Security. I was worth more.

Serj. Peng. What was his Inducement to come into this Office?

Mr. Sol. Gen. Or whether the Easiness of his Page 64. paying for his Place, was not one Thing that induc'd him to purchase?

Kynast. Yes, I believe it was one Inducement.

Sir Wm. Strickl. Whether he could have paid 7575 *l.* for his Office, unless he had paid it out of the Suitors Money?

Kynast. I could not have paid the Whole.

Serj. Peng. What Money he had of his own at that Time?

Kynast. I believe between 2 and 3000 *l.*

Serj. Prob. How much can you say?

Kynast. Really I can't tell.

Serj. Prob. The nearest you can.

Kynast. About 2000 *l.* very near 3, in Money and Effects.

Serj. Prob. What other Estate had you?

Kynast. I had an Estate settled upon me at my Marriage.

Serj. Prob. Whether any other personal Estate?

Kynast. No, except you reckon Timber.

Mr. Com. Serj. The annual Value of his Real Estate?

Serj. Peng. I submit, whether he be obliged to tell his whole Circumstances?

Kynast. I'm very willing to tell: It was about 400 *l.* a Year.

Mr. Comm. Serj. Whether he had not his Estate without Impeachment of Waste?

Kynast. Yes.

Serj. Prob. Of what Value might the Timber be?

Kynast. I was once bid 2500 *l.* for it: But now, they know I have an Occasion to sell, they will not give me so much.

Serj. Peng. Whether his Father was then living?

Kynast. Yes, he was.

Serj.

Serj. Peng. As the Cash was above 20000 *l.* Of what Value were the Securities?

Kynast. I can't tell: I have given in an Account of the Effects.

Serj. Peng. About what Sum?

Kynast. I have given it in my Accounts what it was.

Serj. Peng. To what doth the Whole in Cash and Securities amount?

Kynast. I believe under 50000 *l.* about 46000 *l.* the Securities and Cash together.

Serj. Peng. We submit it, whether the Timber upon his Estate was a proper Security?

Earl of Maccl. He now represents his Estate 400 *l.* How was it reputed?

Kynast. About 500 *l.* *per Annum.*

Mr. Plum. Whether if he had felled the Timber, that and his personal Estate would have paid what he was to give for his Place?

Kynast. It would not.

Serj. Peng. We make Use of this as a Proof of the former Article.

Mr. T. Bennet
examined.

Mr. Thomas Bennet call'd.

Serj. Peng. In what Manner the Transfer of his Office was transacted; and how the Money was paid?

Benn. When I treated with Mr. Hiccocks about the Surrender of his Office, one of the first Things he told me was, that I need raise no Money; for whatever we agreed for should be deducted out of the Money to be paid over to me; which I understood to be that belonging to the Suitors. This encourag'd me to proceed. I suppos'd this to be the Practice, else I had not gone in.

Serj. Peng. Whether that was generally reputed to be the Practice?

Benn. I thought so. I was a younger Brother, and had not Money enough of my own to come into the Office.

Serj. Peng. How much he was to pay, and how rais'd and paid?

Benn. 7500 *l.* to Mr. *Hiccocks*, and 1500 Guineas to my Lord Chancellor; which is 9075 *l.*

Serj. Peng. How it was rais'd and paid?

Benn. The 1500 Guineas I borrow'd of my Brother, and the next Day repaid him out of the Money receiv'd of Mr. *Hiccocks*. As soon as I was admitted, I demanded of Mr. *Hiccocks* the Suitors Effects. He paid me 1500 *l.* and told me I must give him a Receipt for 9000 *l.* I told him, it was hard to have no more, when he had told me there was much more in the Office, and I had given Lord *Macclesfield* more than he had offer'd to pay me. He said, he should pay me more afterwards, but insisted on my taking this now. So I took the 1500 *l.* and gave a Receipt for 9000 *l.*

Serj. Peng. Whether he had any Discourse with the Earl of *Macclesfield* about the Method of his coming in, or the Repayment of the 1500 Guineas?

Benn. Mr. *Holford* told me, my Lord Chancellor had desir'd, that he or my Brother *J. Bennet* would accommodate Matters between Mr. *Hiccocks* and me, on Occasion of the Deficiency of my Accounts, Mr. *Holford* did not care to go, but my Brother did go to Mr. *Hiccocks*. He would do nothing, no Accommodation could be made: But my Brother told me my Lord Chancellor would pay back to me the 1500 Guineas, so the Matter with Mr. *Hiccocks* might be accommodated.

Serj. Peng. When was this?

Page 65.

Benn. About the Time of our giving in our Accounts.

Serj. Peng. Before or after *Christmas*?

Benn. Before *Christmas* last, about the 7th of *December*. Upon that I asked my Brother, whether I might depend on my Lord's paying back the 1500 Guineas? And he said, Yes, he had it from his Lordship, and assured me, I might depend upon it; but that nothing could be done with Mr. *Hiccocks*. I desir'd them to acquaint my Lord with it: They declin'd it, and desir'd I would go my self. I went, and thanked him for

the kind Offer he had made my Brother of returning the 1500 Guineas, and wished the same could be said of Mr. *Hiccocks*; but nothing could be done. I thought I should have received the Money then. My Lord told me, if he had known I had been to give so great a Sum for the Office, he would not have admitted me. I told him, as soon as I was admitted, I enfur'd my Life to the Value of 8000 *l.* which cost me 400 *l.* so that if I had died, no Harm would have come to the Suitors. Soon after that, he said, he was sorry to see the *Items* put into my Account and Mr. *Kynaston's*, relating to Sums in the Hands of an *Honourable Person*; for, says he, that has discover'd the Methods of purchasing these Offices, that the Money is deducted out of the Suitors Money; which, said he, *I have always taken Pains to deny, whenever I have been asked the Question.*

Serj. *Peng.* How much the whole Cash and Securities transferr'd from Mr. *Hiccocks* to him amounted to?

Benn. Near 100,000 *l.*

Ser. *Peng.* He said before he was a younger Brother, and had but little Fortune of his own: Whether any Care was taken by Lord *Macclesfield*, as to the Transferring the Effects in Mr. *Hiccock's* Hands over to him? And whether any Person was employ'd by my Lord to see the Effects transferr'd over?

Benn. No.

Serj. *Peng.* Whether there was any other Security for this great Sum of Money deposited in his Hands, besides the Insurance on his Life?

Benn. No. That was a voluntary Act of my own, and I paid for it.

Mr. *Lutw.* Mr. *Bennet* says, he had some Reason to hope, the 1500 Guineas would be given him back: Whether there was any subsequent Overture about paying the 1500 Guineas back again?

Benn. My Lord Chancellor dismissed me at that Time, and told me, I should not know by what Means, or by what Methods I should receive

ceive the Money, or by whose Hands: But he would take Care I should receive it; he would not say how, because I might be called upon to answer what Discourse past between us in another Place.

Mr. *Lutw.* Was there any Thing done upon that?

Benn. Hearing nothing for a Fortnight, I went to Mr. *Dixon*, and told him, if the Money was not produc'd, it would oblige me to name my Lord Chancellor; and desired him to acquaint my Lord, I could not pay this Money; and must discover it in a Day or two. This was *Sunday* Night: The same Night Mr. *Dixon* return'd from my Lord, and told me, if Mr. *Holford* would be present the next Morning at the Payment of the Money at Mr. *Kynaston's* Chambers, Mr. *Kynaston* and my Self should receive it. We were there the next Day. Mr. *Dixon* came but brought no Money, and said my Lord expected some Indemnification; we said we would give none. He said, he would go to my Lord; but when he came back, he said, it was a Holiday, and no Money could be had, and desir'd us to go to the Judges, and desire two or three Days to produce this Money. I told him we could not; for that very Night the Report was to be laid before the King and Council. He then return'd again to my Lord, as he told us; and when he came back said he was gone out. Upon that we gave in my Lord Chancellor's Name to the Judges, and the Gentlemen of the Bank, and they gave it in to the Council, as I am inform'd.

Mr. *Lutw.* Whether it was explain'd what that Indemnification was, which was expected; and in what Manner it was to be?

Benn. Mr. *Dixon* explain'd it thus——

Earl of *Maccl.* I hope whatever Mr. *Dixon* said, shall not affect me; but that they will produce him.

Mr. *Lutw.* What Officer Mr. *Dixon* was under my Lord Chancellor?

Benn. His Secretary.

Mr. *Lutw.* Whether at that Time, you had the Discourse with my Lord *Macclesfield*, you mention'd any Thing of Mr. *Dixon's* having come to you, in his Name?

Benn. No, that was before Mr. *Dixon's* coming to me.

Mr. *Lutw.* Did you take Notice at any Time to my Lord *Macclesfield* of Mr. *Dixon's* coming to you?

Benn. No, I never spoke to my Lord Chancellor afterwards.

Serj. *Peng.* What the Nature of the Proposal of Indemnification was, that Mr. *Dixon* made?

Earl of *Maccl.* I can't think Mr. Serjeant is in earnest! Have they prov'd he was employ'd by me? Mr. *Dixon* himself is the proper Person to give an Account of what he told them from me. If they insist on it, I must beg your Lordships Judgment.

Serj. *Peng.* If it is insisted upon by the Noble Lord, to disavow the Proceedings of his own Agent, we will waive it.

Earl of *Maccl.* I neither avow nor disavow; but I object to the Evidence of this Gentleman about what Mr. *Dixon* said, who is living, and can speak for himself.

Serj. *Peng.* If the Noble Lord will ask him any Thing, he may; we have done.

Earl of *Maccl.* Whether he did not tell me, when he was with me, if Mr. *Hiccocks* would pay 2000*l.* he would make good the whole Money?

Benn. No, I could not make good the whole Money, or any Thing like it. I said, such a Report had been spread.

Earl of *Maccl.* Was it a Report without any Foundation?

Benn. I went to Mr. *Hiccocks*, and told him I wanted 6000*l.* but he said if 2000*l.* would do, he believ'd he could lend me that. I said if you will give it me it is something. This was the Foundation of the Report.

Earl of *Maccl.* Whether he had said to any other Persons, that if Mr. *Hiccocks* would pay him

2 or 3000 *l.* or thereabouts, he would pay the Rest?

Benn. I might say, I would endeavour to raise the Rest: But I never said I would pay the Whole, for I knew I was not able.

Earl of Maccl. Mr. *Bennet* understands my Question, to which he hath given no Answer. My Question is, Whether he hath not told some other People, that in Case Mr. *Hiccocks* would pay 2 or 3000 *l.* he would pay the Rest?

Benn. No; I never told any Body that I would pay the Rest: But I believe I might say, if Mr. *Hiccocks* would give me 2 or 3000 *l.* I would stand the Hazard; for I did not expect that all the Money should be taken out of my Hand.

Earl of Maccl. Whether I did not ask him, with what Conscience and Honesty he could buy a Place, when he had not Money to pay for it? Or whether it was not in Answer to that, that he told me, he insur'd his Life?

Benn. My Lord did say so. I answer'd, that I had not bought it, had it not been for the Cash of the Suitors; and that I had since secur'd 8000 *l.* on my Life, to secure the Suitors.

Earl of Maccl. What visible Estate he then had, and of what yearly Value?

Benn. About 250 *l.* a Year.

Earl of Maccl. Whether he was married before?

Benn. I was.

Earl of Maccl. What Fortune with your Wife?

Benn. Between 2 and 3000 *l.* Part of it was an House.

Earl of Maccl. The Value of that House?

Benn. I had not let it then; but since for 90 *l.* a Year.

Earl of Maccl. If he did not keep his Coach at that Time?

Benn. I set up my Coach in the unfortunate Year 1720. I was once worth 20000 *l.* but lost it all, and became much indebted: My own Estate was mortgag'd for more than it was worth.

Earl of Maccl. Whether he was married in 1720?

Benn. No.

Earl of *Maccl.* What Estate he hath given in to the Court of Chancery?

Benn. That Account lies on the Table.

Earl of *Maccl.* What yearly Value is that?

Benn. About 900 *l.* *per Ann.* Part of it is settled, the Rest mortgag'd, and an Annuity charg'd on it more than it is worth.

Earl of *Maccl.* Has any Estate been purchas'd with your Money, or Money which came from you since you was Master?

Benn. Part of that given in was so; 68 *l.* *per Ann.* and 40 *l.* *per Ann.*

Earl of *Maccl.* Has any other Estate been purchas'd with your Money, or Money which came from you since you was Master?

Benn. None but what I have given in.

Mr. Common Serj. Whether he was not at the Time of his becoming Master in Chancery, in Possession of the Office of *Clerk of the Custodies*?

Benn. Yes.

Mr. Common Serj. What that was sold for?

Benn. That may affect me and my Successor.

Mr. Lutw. The late Act of Parliament only indemnifies the Masters, but not the Clerk of the Custodies.

Mr. Common Serj. The yearly Value of the Place?

Benn. About 250 *l.* a Year.

Earl of *Maccl.* A Patent for Life?

Ben. Yes.

Serj. Prob. How much had it been sold for?

Benn. I cannot tell——. It may have been once sold for about 1200 *l.*

Serj. Prob. When you surrendred it, what might it have been sold for?

Benn. I submit, whether I am oblig'd to answer that question?

Serj. Peng. If it was not saleable by Law, it was not worth a Farthing. *Mr. Bennet* was excus'd yesterday from answering a Question of the same Nature.

Mr. Common Serj. There was another Ingredient in your Lordships Resolution yesterday. I hope

hope it is no Injury to him to answer how much he has known it to be sold for, without mentioning by whom.

Serj. Prob. We hope he will answer, what is the most he hath known it sold for.

Mr. Plumm. I object to that: Because if he did sell it himself, that might be the greatest Sum he hath known given for it; and that will subject him to a Penalty.

Serj. Prob. We do not ask who gave or receiv'd it, but what is the greatest Price he hath known?

Earl of Maccl. He says, he hath known it sold for 1200*l.* Whether he hath not known it sold for more?

Benn. I believe it hath been sold for more.

Earl of Maccl. How much more?

Mr. West. This is an indirect Way to come at the Question denied them yesterday.

Sir Will. Strickl. This Question tends directly to make him tell what he sold his own Office for. If he sold it, 'tis probable he sold it for the greatest Price; and to tell that, is to say what he sold his own for.

Mr. Lutw. By this Method your Resolution of yesterday will be evaded. We took it then that the Witness was not oblig'd to discover what he sold the Office for. Now they are asking the greatest Price he knew it sold for: The next Question may be, to whom and by whom?

Mr. Common Serj. To object to a Question, because another may follow, is odd arguing. When such a Question is made, it will be Time to oppose it.

Serj. Prob. The Question is proper, and the Answer to it is necessary.

Lord Lechmere: An Objection hath been made; an Answer given; both Sides insist upon Judgment. I desire they may withdraw.

Earl of Maccl. The Reply is not made. Something has been objected by the Managers, to the Question propos'd; which if they insist upon, I desire my Counsel, who are to reply, may be heard before they withdraw.

Serj. *Prob.* The Managers have examin'd into Mr. *Bennet's* Circumstances when he was admitted, to shew, that he was then not fit to be intrusted: We are then to examine him as to his Substance and Effects. He has told his Estate in Land; we are now to examine his Personal Estate. He hath told us he had an Office, that he hath parted with; the Money arising by that Office must be reckon'd as Part of his Personal Estate. To come at the Value, we ask him the greatest Sum he hath known given for that Office? He may Answer this without involving himself in any Difficulties: For we do not ask what he himself sold it for.

Dr. *Sayer*: The Answer to our Question cannot any Way involve him in Danger, or subject him to any Penalty, because it doth not necessarily follow that he sold it at the greatest Price.

Mr. *Robins*: We agree, that where he may subject himself to a Loss, there is no forcing him to answer: No Person is bound to accuse himself. But this is only a Matter of Discovery what the Value of this Office is; and the Answer cannot affect him.

Mr. *Strange*: I am surpriz'd to hear it said, this is not a Question material. Surely 'tis as material for us to increase his Estate, as for them to diminish it. They have examin'd into Particulars, to shew what small Substance he was of, and what his Estate was mortgag'd for. The proper Answer will be to shew, that he had other Estates and Effects; and we are not able to shew that without examining him.

Earl of *Maccl.* The Objection is, that he is not to be ask'd a Question, which, if answer'd, will charge himself. Whatever he answers to this cannot charge him. If he says, he has known this Place sold for 1000, 1500, or 2000 *l.* can that be given in Evidence to affect him? The Question to Day is not the same as was ask'd yesterday. It was then ask'd, what he receiv'd for his Place? and his Answer would have been a Confession, which

which would have convicted him. But, if the Answer be, that he knows it was sold for such a Price, it doth not by that appear that he sold it. Page 68.

Serj. *Peng.* This is by a Side-wind to know your Lordships Opinion upon the ninth Article.

Earl of *Maccl.* I agree the Commons, who bring in the Charge, have a Right to reply: But this Objection arising from my Counsel, the Reply belongs to them.

Serj. *Peng.* The Objection arises from the Managers, and therefore the Reply belongs to them. This is in Consequence, to desire your Judgment, Whether the Clerk of the Custodies be a saleable Office by Law, or no? If he is oblig'd to answer this Question, 'tis on a Supposition, that the Transaction is lawful. There can be no other View, but to get an Opinion upon this Article. This Proceeding is, in Consequence, the same as if a Question was propos'd, Whether my Lord *Macclesfield* could by Law sell the Place of the Clerk of the Custodies.

Mr. *Lutw.* When it is consider'd, this Question can be only to elude the Resolution of yesterday. There should be always the greatest Candour us'd before your Lordships; no Tricks to ask what should not be ask'd. Here is a Person alledg'd to be of mean Ability, and the Question is, What Substance and Estate he hath? They would reckon into his Estate an Office not saleable by Law; and ask him what it is worth? The Inference must be, that he sold it.

Earl of *Maccl.* That is not the Question, what it is worth; but what's the most it hath been sold for.

Mr. *Lutw.* What doth that tend to? The Question is, what Estate he had to enable him to pay the Money for this Office? They have examin'd his own Estate and his Wife's: But there is another Part of his Estate, which is this Office of Clerk of the Custodies; and that's the very Thing we say is unlawful to sell. 'Tis no Way material to the Earl's Defence. We hope your Lordships will not
admit

admit that to be done by an indirect Method, which would not be admitted by a direct one.

The Witness not to be ask'd, what he hath known his Office sold for.

All Parties concern'd being order'd to withdraw, and after some Time call'd in again, the Lord Chief Justice King declar'd the Judgment of the Lords, that the Question was not to be ask'd.

Mr. Plumm. I would ask *Mr. Bennet*, Whether every Thing he had in the World at the Time of his Purchase of the Mastership, was worth the Money he gave for it?

Benn. No.

Serj. Prob. Whether he knew, at the Time, that his Estate was not worth so much as it was mortgag'd for?

Lords: No! No!

Mr. Plumm. If my Lord *Macclesfield*, at the Time of his Admission into his Office, did ask him what he was worth?

Benn. Never any Thing like it.

Earl of Maccl. Whether I had any Notice of his Losses by the *South-Sea*?

Benn. I do not know, that my Lord Chancellor had any Notice of it.

Serj. Peng. Both these Articles are as clearly prov'd as possible. It comes out now, that though several Masters were intrusted with 40, 50, or 80000 *l.* they were not of any competent Substance, nor really worth what they paid for their Places. As to the Manner of Paying for them, the Notoriety of the Fact being prov'd, is a reasonable Evidence in it self, and by the Notice the Lord took of it himself by the Questions he hath ask'd, 'tis yet clearer. We submit, Whether every Part of these two Articles is not sufficiently prov'd.

Then the Managers and Counsel were directed to withdraw, and the Lords adjourn'd to Ten the next Morning.

The THIRD DAY. Saturday, May 8.

Third Day.

*The Lords being seated, and Proclamation made,
as before,*

Lord Chief Justice King: Gentlemen of the House of Commons, you may proceed in your Evidence. Page 69.

Mr. Gybbon: The Charge in the 13th and 14th Articles, is, that the Earl, knowing Mr. *Dormer* had dispos'd of great Part of the Suitors Money for his private Advantage, by which there is a Deficiency of at least 25000 *l.* and that *Dormer* absconded, instead of taking proper Methods, to compel him to make Satisfaction to the Suitors (from an Apprehension of Lessening his unjust Gain, by selling the said Offices,) did endeavour to conceal the State of the said Office, and deceitfully declare, that Mr. *Dormer* was *only gone to take the Air; that he would return in a little Time, and all would be well.* That Mr. *Dormer* having assign'd to Mr. *Edwards* (his Successor) 24046 *l.* 4 *s.* due from Mr. *Wilson* (a Banker) to Mr. *Dormer*, to be applied as the Court should direct, the Earl, for the unlawful Purposes aforesaid, did clandestinely authorize a precarious and trifling Composition with *Wilson*, upon his paying 1463 *l.* 2 *s.* 1 *d.* and assigning 10000 *l.* Part of 22060 *l.* 12 *s.* 5 *d.* pretended due to *Wilson* from *Edward Poulter*: And on Mr. *Hiccocks's* Report, did, by a private Order, without Attendance or Notice, order Mr. *Edwards* to accept that Composition in Discharge of the said Debt; which *Poulter* was insolvent, and has since absconded for Debt, and little or none of the said 10000 *l.* has, or is likely to be receiv'd.

Mr. Gybbon opens the 13th and 14th Articles.

The Earl is charg'd with the highest Breach of Trust to the Suitors; and that for the most unjustifiable End.

These Crimes need no Aggravation; and the Earl's Answer shews they are capable of no Excuse.

He

He says, *Mr. Dormer, being out of Reach, his Effects unknown, except the Stock, which could not be transferr'd without his Concurrence, he, seeing no other Way, and being made believe, if a Deficiency happen'd, it would be made up by other Masters, did agree, that in Case Mr. Dormer would come, and discover, and assign his Effects, for the Benefit of the Suitors, he would allow him his Liberty on that Condition, and not otherwise.*

Sure, a Sequestration would have been the speediest Way to find and secure the Effects: But it might have been a Way too open; for it must have publish'd the Deficiency; whereas *Mr. Dormer's* coming home, and quietly resigning, hush'd all Inquiry.

What the Earl means by being *made to believe* the Deficiency should be made up, I am at a Loss to know. It does not appear, the Masters entred into any Contract to do it; and could he think any Discourse between him and them (if such there was) a sufficient Security for the Suitors?

But suppose the Masters had contracted, I submit, how far that would have been justifiable. For how should that Supply arise? If out of the Suitors Money in their Hands, that was only supplying one Deficiency by making another: And if out of their own Estates, that, by lessening their Substance, would diminish the Security of their own Suitors. And what could induce the Masters to such a Contract, but to conceal the Deficiency, to raise their own Places upon their Resignations? I therefore submit, Whether the Earl's Answer is not an implied Confession of an Endeavour to conceal this Deficiency, to keep up the Price?

I do not find, that *Mr. Dormer* was examin'd on Interrogatories touching the Debts to the Suitors, or the Effects he had to answer them. He did not give a satisfactory Account of his Balance; and with great Difficulty was prevail'd on to convey his Estate: But yet he continued to have his Liberty.

The Earl says, *He did not doubt, but the whole Debt upon Dormer would be paid.*

Ho

He knew it ought to be paid; and since it is before your Lordships, I likewise do not doubt but it *will*.

He quotes on some Occasions the Example of his Predecessors. I wish he had follow'd those in Page 70. the Case of Dr. *Edisbury*.

He insists, *He does not remember any Application, but what he granted, as far as he thought, to the Benefit of the Suitors.*

We shall offer Proof to the contrary. But, if so, was that sufficient? Was he to wait till Application was made by the Masters? It was not probable many of them (who had bought high, and were to make the most of their Places,) would apply for securing the Person or Effects of a Master. The Discovery of a Deficiency in him would have made other Suitors apprehensive: For every one knew how freely they traffick'd in 1720. Could then the Earl expect they would Interest themselves much in an Examination of this Kind? But was it less his Duty to take proper Precautions for the Suitors Safety, because the Masters neglected it? No certainly, unless for the Reasons assign'd in the Article.

He says, he *never endeavour'd to conceal the State of the Office, nor did any of the Suitors, till lately, apply to him to look into it.*

Many of them call'd for their Money, and were order'd their whole Demands, while Mr. *Edwards* had wherewithal: But those who did not know and complain of the Deficiency, have now a melancholy Case.

He *remembers nothing of the Expression charg'd in the Article.*

On Recollection, he will easier call it to mind, than be able to justify it.

He says, *He quitted all Advantage of the Disposal of Dormer's Office.*

It has been made appear, there could be no such legal Advantage. Where then is the Generosity? Money, which he ought not to have taken, is given up towards the Debt of the Court, for which he himself is answerable.

He

He says, after Dormer's Assigning Wilson's Debt to Mr. Edwards, he believes Edwards used great Endeavours to obtain it from Wilson; but finding Wilson offer'd a Composition, Edwards petition'd.

There was no Bankruptcy taken out (though press'd for) against Wilson; no Suit commenc'd against him, nor so much as any Process to get in this Debt.

He says, Mr. Hiccocks reported, that Composition would be for the Benefit of the Persons entitled.

It does not appear, Mr. Hiccocks had look'd much into Wilson's Circumstances: But yet he took upon him to apportion Part of Poulter's Debt as a Composition for the Suitors; tho' Wilson paid several of his Creditors afterwards their full Demands.

Strange Proceeding sure! But the two Masters employ'd on this important Occasion, were very soon (pending the Affair) allow'd to sell their Places at exorbitant Prices! Rogers for 6000 l. and Hiccocks for 7500 l. which very Sums now remain a Debt to the Suitors of their Offices.

He says, on Mr. Edwards's second Petition, with Mr. Hiccocks's Report annex'd (praying an Order to accept that Composition,) he in an usual Manner order'd the same as pray'd, and believes the Composition was agreed to on a Consultation of all or most of the Masters.

I have heard the usual Manner is to have such Petitions set down to be heard in publick, and the Parties summon'd. The Statute of Bankrupts directs Notice in the Gazette: The Creditors have Opportunity to make Inquiries, and see every Thing done: The Bankrupt is not entitled to his Liberty, nor any Benefit, without a full Discovery of his Effects, and the Consent of four Parts in Five in Number and Value of the Creditors. How the Earl could think the Suitors (whose Money was forc'd from them by the Court, and put into the Hands of a Bankrupt-Master,) should have less Care taken of them, less Privileges allow'd them, than

than any other Creditors, I cannot comprehend; but I think this clandestine Proceeding a strong Proof of the Crime charg'd.

As to the *Composition being agreed to by most of the Masters*; that (if so, tho' we shall prove the contrary,) I should not wonder at: For any Composition obstructed the Inquiry and Proceedings, which otherwise must have been publick. But had it been agreed to, on a Consultation of the Suitors, it would have been a good Defence.

He says, *at that Time Poulter was look'd on to be substantial.*

We shall produce Evidence to the contrary. The Earl does not shew any proper Inquiry made into it. Sure, his Circumstances should have been carefully look'd into, and Securities taken in Court: But that could not be done without publick Notice of the Deficiency.

When I consider the Earl's Experience and Abilities, I can never think the Remifness in this Inquiry, these clandestine and unusual Proceedings, this precarious and trifling Composition, could happen through Inadvertency only: I therefore insist upon it, as a Proof of the Charge.

Then Mr. *Hedges* proceeded to state the Evidence, as follows.

The 13th Article sets forth, that Mr. *Dormer* having embezzled 25000*l.* of the Suitors Effects, and absconding, Application was made to the Chancellor, to secure his Person and Effects: Which he neglected and declin'd to do; and endeavour'd to conceal the true State of the Office. And, upon Motion made in Court (after he knew that *Dormer* had absconded,) that some of the Effects might be transferr'd to a more secure Office, his Lordship, to delude the Suitors and prevent a publick Inquiry, did, in open Court, say, *The Parties need not be in haste; for Mr. Dormer was only gone to take the Air in the Country, and would return in a little Time, and all would be well.* And notwithstanding his Endeavour to evade the Charge, I am persuaded, it will be made out in every particular. For it will appear, that

Mr. *Hedges* proceeds to open the Evidence.

that Mr. *John Bennet* and Mr. *Lightboun* went, in the Name of several of the Masters, and acquainted him, Mr. *Dormer* had not fairly stated his Accounts; that there was a Deficiency upwards of 20000*l.* and that it was necessary, for Example sake, he should be committed, according to the Precedent of the Lord *Cowper* in Dr. *Edisbury's* Case. But the Earl, insisting on *Dormer's* Liberty, they repeated the Necessity of making such an Example, but at last left him fix'd to continue him at Liberty.

This Promise of Freedom to *Dormer* was only conditional; If he gave in a fair Account, and assisted in getting in the Debts. But he was so far from complying, that, when he gave an Account in Writing of the Balance amounting to 49000*l.* he only inform'd them, that 24000*l.* of it was due from *Wilson* a Banker, *since broke*; but no Notice could be obtain'd from him as to the Remainder.

Upon this the Masters were summon'd, and acquainted with it; and that Account was left with Mr. *Cottingham* for my Lord's Perusal.

Mr. *Rogers* and Mr. *Hiccocks*, being directed to procure a Conveyance of *Dormer's* Estate, for the Benefit of the Suitors, it was with the greatest Difficulty comply'd with by *Dormer*.

His Lordship denies, that he endeavor'd to conceal the true State of the Office from the Suitors, or that he remembers the Expression he is charg'd with.

Since he is resolv'd to deny, that he endeavour'd to conceal the State of the Office, it were to be wish'd by him, that he could safely deny this Expression, which proves that Endeavour directly. But the Words were spoken, and can be sworn to, beyond Doubt or Mistake.

We shall further shew, that a Message was sent from the Chancellor to Mr. *Lightboun*, that he should advance 500*l.* towards this Deficiency; acquainting him that it was for the Honour of the Court; and that the Appearance of a Deficiency would be of ill Consequence. But Mr. *Lightboun* refus'd to comply with what would only skin over

the Wound, and not cure it. And yet this Proposal was enforc'd with the Threats of a Parliamentary Inquiry; wherein, if it should appear that they had *bought* their Places *contrary to the Statute*, it might go ill with him, but much worse with them. At another Meeting of the Masters, a further Demand was made of them in order to conceal the State of that Office; but all the Masters refusing, the Chancellor himself paid that Demand of 1000*l.* not out of Regard to the Suitors, but for his own Advantage, knowing that the Notoriety of this Insolvency would make the Masters Places less valuable; and therefore he parted with this Sum, to insure himself a greater Prospect of Gain at his next Sale. Nor was it necessary for those who dealt at this Auction, to bring any Money of their own to it; the mere Admittance into the Office immediately giving them Possession of a Cash sufficient to answer his Lordship's Expectations. Thus *Beggars* were his best Purchasers, tho' sure to be the worst Trustees for the Publick.

How great a Hardship must it be to the Suitors to be contending many Years for their just Property, at an Expence not proportionable to their Fortunes; and to find at last, when they had obtain'd a Decree in their Favour, that their Money was lost in a Bankrupt-Office? In this Consideration every Man in *Britain* is concern'd. For, what Estate may not, in a few Years, come under the Direction of that Court? How much then does it concern every Individual, and even the Legislature it self, that all Avenues of Justice should be safe and open? But, how much more the Honour and Conscience of the Person who presides, to be the first in setting up a Mark to avoid the Precipice?

If in this Article, there appears a criminal Endeavour to conceal the Deficiency, supported by a false Assertion in open Court, to delude the Suitors, and a great Neglect in not securing Mr. *Dormer's* Person; in the 14th Article he will appear in a yet more guilty Light, not only neglect-

ing to inquire into his Effects, but on Inquiry made, and Time had for mature Deliverance, confirming a precarious and trifling Composition, and tying down the Suitors by his Authority, to the certain Diminution of one Half, and probably to the Loss of the Whole.

He denies none of the Facts in this Article, but admits them as they stand charg'd.

He insinuates, that Mr. *Edwards* us'd great Endeavours to obtain Payment from *Wilson*, but found them fruitless; *Wilson* having stopp'd Payment.

Whatever Endeavours Mr. *Edwards* us'd, they were not unlikely to prove fruitless, since (as he adds) *Wilson* had long before stopp'd Payment. But we can prove, that *Wilson's* Books were never inspected by Mr. *Edwards*: That he never knew what his Debts were; nor any Thing more of him, than that *Wilson* came voluntarily to him, and propos'd to pay 1400*l.* in Ready Money, and to assign over a Debt of 1000*l.* due from *Poulter*, whose Circumstances were still more precarious than his.

His Lordship asserts, that he order'd this Affair in the usual Manner, and believes the Composition was agreed to upon a Consultation of all or most of the Masters. But we shall make it appear, the whole Transaction was in a clandestine Manner.

As to the Consent which he says, he believes the other Masters gave, we shall prove, that Mr. *Edwards* was the only Person concern'd on Behalf of the Suitors: And so far was he, or any of the Rest, from taking the best Care they could, that the first Draught of a Composition, which *Wilson* brought, was settled between him and Mr. *Hiccocks*. And when Mr. *Edwards* mention'd it to some of the Masters, they were so far from approving it, that it was the Opinion of one of them, that a better Composition was to be had; and another propos'd a Commission of Bankruptcy, as the only Means to bring the Matter to a proper Light.

But that Light his Lordship was most afraid of, That would have discover'd the Deficiency of this Office, which would have brought a Disrepute upon others, and lower'd the Price. This was his only Care; whilst he could, unconcern'd, see the Suitors Money wasting successively thro' three Bankrupts Hands.

We shall further prove, that when he order'd a Petition to himself, that he might approve of the Composition, he never order'd, nor had the Suitors any Notice: Nor did he ask, if *Wilson* had compounded with his other Creditors, or had sworn to his Circumstances.

At this very Time Mr. *Edwards* was inform'd *Poulter's* Circumstances were very bad: And none attended the Commission against *Poulter* on Behalf of the Suitors.

Mr. *Edwards* confesses, if it had been his own Money, he would have look'd more carefully after it.

Notwithstanding this Debt was compounded with *Wilson*, yet he has paid several Creditors their whole Debts with Interest.

His Lordship believes Mr. *Edwards* has since got in 1000*l.* of *Poulter's* Debt. The Truth is, 1000*l.* has been recover'd by an accidental Discovery of his conceal'd Effects, which was paid Mr. *Edwards* by *Wilson*.

But does he seriously intend this for any Vindication, that, after four or five Years, instead of 24000*l.* he believes 1000*l.* may have been recover'd?

A different Care has appear'd with Regard to his private Advantage, and to that of the Suitors.

In their Case, he could subject their Estates to a Master, who had squander'd away their Substance and his own: But in his own, the least Advantage was not neglected; and the Difference of *Guineas* meanly insisted on instead of *Pounds*.

The Commons are not desirous to enlarge upon Matters of smaller Moment. His Lordship might have enjoy'd his Hundred *Guineas* in Quiet, had not a long Series of his Conduct tended to destroy

the Reverence due to the Law, by an Execution of them, instrumental to the Ruin of the Subject —

The Commons beheld with the deepest Concern such Practices as have deform'd the Beauty of Justice, and render'd it fatal to the Subject: They have beheld that Minister of Justice, whom the Laws have invested with an extraordinary Power to punish Frauds and Deceits, himself carrying on a most pernicious Deceit, to the Dishonour of the Court, and Ruin of its Suitors; the Guardian of Orphans become their Oppressor; the Keeper of the King's Conscience prostituting his own, and the Dignity of his high Station, to an ignominious Traffick with the best Bidder, and imploying the Scales of Justice in the Business of a Usurer.

But that Parliamentary Enquiry is now come, with the Terrors of which he forc'd the Masters into Compliance with his arbitrary Demands. He then foretold, it might possibly go ill with him, tho' it would fare worse with them. So just a Decree, pronounc'd by himself against himself, is, we trust, in no Danger of being revers'd; but rest assur'd, that, as far as it regards him, it will be unanimously confirm'd by your Lordships.

Mr. Lutw. We shall now proceed to shew, that the Deficiency of *Dormer's* Office was endeavour'd to be conceal'd by many indirect Practices. And first we shall prove a Deficiency of about 25000 l.

Mr. Thompson
examin'd to the
13th and 14th
Articles.

Mr. Thompson call'd.

Mr. Lutw. As this Matter was referr'd to his Examination, we desire an Account, how he found the State of Mr. *Dormer's* Office, and what Deficiency was in it?

Thomp. In our Report the Debt due from Mr. *Dormer's* Office was 49604 l. 11 s. 11 d. and Mr. *Edwards* (his Successor) had paid the Suitors 23725 l. 15 s. 9 d. $\frac{1}{2}$. so there remains due to them 25878 l. 16 s. 1 d. $\frac{1}{2}$.

Mr. Lutw. We call Mr. *Edwards*.

Mr. Henry Edwards sworn.

And *Mr. Edwards* to the same.

Mr. Lutw. How much the Deficiency is?

Edw. According to the Account given in, the Deficiency is about 25000*l.* and odd Hundreds; but about 1500*l.* more is since discover'd.

Mr. Lutw. Whether he knows of any other Deficiency?

Edw. No.

Serj. Prob. Whether there has not also been a Discovery of further Effects?

Edw. not as I know of. I'm inform'd, Administration hath been lately taken out to *Mr. Dormer*, that there hath been a Discovery of Effects, but to what Value I can't tell.

Mr. Strange: Whether he hath had any Account from the Administrator?

Edw. *Mr. Paxton*, who administred, told me, he had discover'd some Effects, but did not tell me the Value.

Mr. Lutw. How long ago this Discovery was made?

Edw. I believe *Mr. Paxton* administred about two Months ago, and hath made this Discovery since that Time.

Serj. Prob. Whether he had not Notice before Christmas last, that there was other Effects of *Mr. Dormer*, and from whom?

Edw. I believe I had: And I told *Mr. Paxton* of it.

Earl of Maccl. Who brought him Notice of these Effects?

Edw. A Gentleman who liv'd near *Mr. Dormer's* Country-house. I have forgot his Name.

Earl of Maccl. Was his Name *Goodfellow*?

Edw. I believe it was.

Earl of Maccl. Who he came from?

Edw. I think he said he came from *Mr. Cottingham*. I understood your Lordship had been acquainted with it, but not that he acquainted you of it.

Mr. Campbel sworn.

Mr. Campbel to the same.

Mr. Lutw. Whether he knows of any Goods or Effects

Effects of Mr. *Dormer* being discover'd, and when, and how long they had lain there?

Campb. In 1721, I bought a Parcel of Hops, but did not then know whose, but since find they were Mr. *Dormer's*. They were 148 Bags. I sold sixteen the same Year, and 101 since. I bought them of several Countrymen, by Commission: But Mr. *Dormer* did not imploy me; neither did I receive the Money from his Hands.

Mr. *Luttrell*. How long the Goods did lie where they were? And whether there was any Loss by the Sale, being left so long there?

Campb. They had lain there above three Years; and I believe there was above 500*l.* Loss upon them.

Mr. *Plumm*. How he came to know they were Mr. *Dormer's*?

Campb. I was told so, by Mr. *Paxton*.

Serj. *Prob.* By whose Direction they were kept so long by him?

Campb. The Reason they lay so long was, I had no Orders to sell them.

Serj. *Prob.* Who gave you Orders to buy them?

Campb. One Mr. *Longmead* of *Islington*.

Mr. *Common Serj.* Whether they were not then at a low Price?

Campb. They were.

Mr. *Common Serj.* Whether many People have not kept Hops, upon a Supposition that they would rise?

Campb. Yes; a great many.

Serj. *Prob.* Whether he did not keep other Hops, as well as these, for a better Market?

Campb. Yes, I had several others bought that Year, that I kept for a better Market, and still had a worse. I have Hops by me, cost me 5*l.* a Hundred, now not worth 10*s.*

Earl of *Maccl.* How much in a Bag?

Campb. I can't tell, because they are not weigh'd.

Earl of *Maccl.* Whereabouts?

Campb. Sometimes three Hundred, sometimes two and an Half, and sometimes two and three Quarters.

Mr.

Mr. Lutw. Whether this Loss of 4 or 500 *l.* happen'd in the Difference of the Price, or by the Hops being spoil'd?

Campb. Both by the Hops being cheaper, and by the Antiquity of the Hops.

Mr. Lutw. Who is this *Mr. Longmead*?

Campb. A Grocer at *Islington*.

Mr. Lutw. Whether he is not *Mr. Dormer's* Servant or Agent?

Campb. His Agent, for any thing I know.

Mr. Common Serj. Whether he was not his Agent, for ought he knows?

Campb. I believe he was an Agent for him, because he paid me all the Money, and gave me Orders to buy the Goods.

Earl of Maccl. Whether he infers that *Longmead* was *Dormer's* Agent, because he paid him Money? Might not he have paid the Money, tho' he had not been his Agent?

Lord Chief Justice King: Speak your own Knowledge.

Campb. I never ask'd him whose they were. He employ'd me, and I bought them, and suppos'd they were *Mr. Dormer's*.

Mr. Sol. Gen. We desire *Mr. Paxton* may be call'd to shew how he discover'd these Effects?

Mr. Nicholas Paxton sworn.

Mr. Paxton
examin'd.

Mr. Lutw. What he knows of these Hops?

Paxt. After my Administration to *Mr. Dormer*, I made Inquiry into his Effects. *Mr. Longmead* told me of some Hops; that he was Servant to *Mr. Dormer*, and bought them by his Direction. We went to *Mr. Campbell*, who said they were saleable, and would bring in 200 *l.* He told me, they cost 800 *l.* and it would be best to dispose of them as fast as I could. They are not yet fold.

Mr. Lutw. It is admitted that *Mr. Dormer* absconded. It will lie upon the noble Lord to give an Account what he did thereon. We now proceed to the Composition with *Wilson*, who was a Banker, that *Mr. Dormer* intrusted with Money. We beg Leave to shew a written Evidence; an Or-

der under this Lord's Hand for this Composition, tho' never drawn up: And indeed, through the whole of these Proceedings, there is not one Affidavit, Order or Report filed in the usual Manner; that nothing of it might appear on Record. The first we shew is an Assignment from Mr. *Dormer* to one of the Masters, of this Debt: And then we shall give an Account of the Proceedings thereupon.

Mr. *Green* proves *Dormer's* Assignment.

The Assignment read.

Page 76.

Page 77.

Mr. *Edwards's* Petition read, and the Answer to it.

Page 78.

The Master's Report and the Proceedings thereon, read.

Mr. *Will. Green* sworn.

Mr. *Lutw.* Whether he saw this Deed executed, and by whom?

Green. I saw it executed by Mr. *Dormer*.

Then was read the Assignment dated 26 July 1721, from Mr. *Dormer* to Mr. *Edwards*, of *Wilson's* Debt to him of 24046 l. 4 s. 0 d. for the Benefit of the Suitors.

Mr. *Lutw.* The next thing is a Petition of Mr. *Edwards*; to which there is an Answer writ by Mr. *Cottingham*, and sign'd by the noble Lord. No Order is drawn up upon it: Nothing appears in Publick; therefore we must prove his Hand.

Earl of *Maccl.* This is my Hand.

Then was read the Petition of Mr. *Edwards*; praying that *Wilson's* Proposal of a Composition may be referr'd to one of the Masters: And an Order of Reference to Mr. *Hiccocks* dated 30 June 1722.

Mr. *Lutw.* In this Petition it is recited, that *Dormer* was indebted to the Suitors; and therefore the greatest Care should have been taken for their Benefit. I believe no Person hath known such a Proceeding, in the most trifling Matter. The next thing is a second Petition, said to be with a Report annex'd, but we can't find it fil'd. Here is a Paper of Mr. *Hiccocks*, not stamp'd nor filed, which we apprehend to be the Report meant.

Then was read that Paper, dated 26 July 1722, and sign'd *Hiccocks*, purporting his Report and Opinion, that the propos'd Composition would be for the Benefit of the Persons entitled.

After

After that was read another Petition of Mr. *Edwards*, praying an Order to him to accept the Composition: And the Answer to it dated 3d *August* 1722.

Mr. *Lutw.* I believe there is no Precedent. The Prayer of the Petition is, that Mr. *Edwards* may be order'd to accept of this Composition, or for such other Order as his Lordship should think fit. The Answer is, *Be it as is pray'd; of which give Notice forthwith*: By which I suppose the Parties understood, it was ordering Mr. *Edwards* to accept of this Composition. Now 'tis wonderful then, why it is said, *Give Notice forthwith*, when the Thing is done. Besides, to whom should such Notice be given? Surely, to the Suitors. But he had not appointed any Solicitor for them: And they had no Notice; tho' here is a Shew of what is done in other Cases.

Mr. *Plumm.* The Petition is by Mr. *Edwards* only, one of the Masters. None of the Suitors are Petitioners.

Then the Clerk reads two Certificates, sign'd by *Edw. Goldsborough*, Deputy Register, that there were no such Orders entred, nor such Reports filed.

Certificates read, that the Orders were not entred, nor the Report filed.

Mr. *Lutw.* The Composition is sign'd by *Will. Wilson*. I desire Mr. *Edwards* may be ask'd whether he knows Mr. *Wilson's* Hand?

Edw. This is Mr. *Wilson's* Hand.

Then the Clerk reads *Wilson's* Propofal of Composition; or Assignment of 10000*l.* Part of a Debt of 22060*l.* 12*s.* 5*d.* due to him from *Poulter* dated, 28 *Aug.* 1722. with a Receipt thereon for 1000*l.* paid Mr. *Edwards*, in Part thereof, 31 *Oct.* 1724.

Wilson's Assignment read. Page 79.

Mr. *Lutw.* This Composition is recited to be in full Discharge of *Wilson's* Debt. Now, whether Mr. *Edwards* made any Application to the Earl, before his first Petition?

Edw. I had receiv'd Propofals from *Wilson*. He told me, he had a Sum in his Hands, and was willing to pay the Debt to Mr. *Dormer*, in Proportion with his other Creditors; and ask'd me whether

whether I would accept of a Composition. I told him, I would represent it to some of the Masters. I spoke to Mr. *Hiccocks* the senior Master, and I believe to others. He was of Opinion, that I could not safely make a Composition: But said, he did not see why, upon a Petition to my Lord Chancellor, he might not direct an Inquiry. Upon that I waited on my Lord, and acquainted him with *Wilson's* Proposal. I told him, I thought I had not Power to do it: And he said, he thought so too. I said, I was inform'd it was usual to apply to the Court by Petition, that it may be referr'd to a Master. His Lordship thought it very proper, and advis'd it; which accordingly I did.

Mr. *Lutw.* Whether it was said, whether his Lordship had such a Power.

Edw. There was nothing said of this.

Mr. *Plumm.* Whether any of the Suitors were acquainted with the intended Composition.

Edw. No.

Mr. *Sol. Gen.* Did my Lord direct Notice to any of the Suitors?

Edw. No.

Mr. *Plumm.* Whether he himself attended Mr. *Hiccocks*, when *Wilson* was before him?

Edw. I'm not sure I was there at any Time with *Wilson*.

Mr. *Plumm.* What Methods were taken to know what *Wilson* was worth?

Edw. I understood that Mr. *Hiccocks* and *Rogers* were directed to inspect those Matters, and that they did look into *Dormer's* and *Wilson's* Books.

Mr. *Plumm.* Was any body imploy'd in Behalf of the Suitors?

Edw. I was before Mr. *Hiccocks*, but not with Mr. *Wilson*.

Mr. *Plumm.* If any body on the Suitors Behalf was present there with *Wilson*, to see and cross-examine him?

Edw. I don't remember there was.

Serj. *Peng.* Whether this Petition is of his own Hand-Writing?

Edw.

Edw. No, it is my Clerk's.

Serj. Peng. Whether the two last Lines were struck out before the Answer to the Petition, and by what Hand?

Edw. I don't know when.

Serj. Peng. At the End of the first Petition the Master desires an Indemnification by the Court. Part of the Petition is that he may be indemnified. But that is struck out before the Answer; which shews the Notice he took, how hazardous that Transaction was.

The Words read [*And that your Petitioner may be indemnified, and saved harmless, in making such Composition.*] The Words struck out.

Edw. This Paper I laid before the Committee. I was surpriz'd to see those Words struck out; but can't say when, or by whom.

Mr. Lutw. If they were struck out before he deliver'd the Petition in to the Committee?

Edw. Yes.

Mr. Sol. Gen. How much he hath receiv'd of this Composition?

Lord Lechmere: Whether these Words were struck out after the Petition delivered, and before the Order made by the Earl?

Edw. I don't remember to have taken Notice of it, till I look'd for it, to lay it before the Committee.

Lord Lechmere: Whether he hath any Doubt, whether they were struck out before they were deliver'd in to the Committee?

Edw. They were.

Mr. Sol. Gen. In whose Custody was this Petition?

Edw. Mr. Hiccocks sent it to me; and I have had it ever since.

Serj. Peng. Whether he struck out these Words that were inserted for his own Indemnification?

Edw. No.

Earl of Abingdon. There was no Commission of Bankruptcy against Wilson: Therefore, what Method was taken to inform the Court of his Substance, before the Composition?

Edw.

Edw. I know of no other.

Earl of Abingd. Was *Wilson* examined on Oath?

Edw. *Mr. Hiccocks* told me, *Wilson* had made an Affidavit, that this was what he was able to pay in Proportion.

Mr. Lutw. Was this Affidavit ever filed?

Edw. No.

Mr. Sol. Gen. How much he hath receiv'd of this 10000 l.

Edw. Only 1000 l.

Mr. Sol. Gen. What is become of *Poulter*?

Edw. *Wilson* told me he is in *Holland*, or *France*.

Mr. Sol. Gen. What was his Character, as to Substance, at the Time of his Composition?

Edw. All I heard of him was from *Wilson*.

Mr. Lutw. When was this 1000 l. paid?

Edw. I believe in *October* last.

Mr. Sol. Gen. Whether he looked upon *Poulter* as a Man of Substance?

Edw. *Wilson* represented him as able; and from his Representation I believ'd him sufficient.

Mr. Sol. Gen. Whether he inquir'd into *Poulter's* Character.

Edw. I ask'd *Wilson*. He told me, one *Helbut* a *Jew*, who was his Bail, could tell his Substance. I asked *Helbut*, who said, he believ'd him in very mean Circumstances.

Mr. Plumm. Whether *Wilson* hath not paid his whole Debt to several other Creditors?

Edw. I am inform'd he hath to some.

Mr. Plumm. What Directions he receiv'd from my Lord, to inquire into his Circumstances?

Edw. None.

Mr. Plumm. Whether any Inquiry was made by the Earl?

Edw. Not as I know of.

Mr. Lutw. Whether there was a Suit commenced for this Debt assign'd?

Edw. I understood it was for this Debt assign'd, which *Wilson* recover'd at Law.

Serj. Peng. Whether *Poulter* hath appear'd, and been esteem'd solvent, or quite gone?

Edw.

Edw. I have not seen him, nor any that have seen him, for some considerable Time.

Serj. Peng. These several Acts and Orders made by the Earl, relating to this Deficiency, do take Notice of *Dormer's* Deficiency, and himself does one Act which makes a Deficiency; that is, the compounding a Debt due from *Wilson* to *Dormer*. Be pleas'd to retain them in your Memory, till we come to the * 6th Article: Where we shall shew, that he declar'd he never knew of any Deficiency, and directed a Master to inquire if there was any. So that those publick Acts won't be necessary to be read again upon that Article; but are sufficient to prove the Notice he had of this Deficiency, and that he made Part of it himself.

Serj. Prob. Whether any of the Masters were acquainted with this Agreement with *Wilson*?

Edw. I don't remember any but *Mr. Hiccocks*.

Serj. Prob. Whether there was any Consultation between him and other Masters, as to the Manner of this Composition, before it was accepted; and whether it was reasonable or not?

Edw. I mention'd it to two or three other Masters at the Office, but can't be particular whom.

Serj. Prob. Before the Composition made?

Edw. Before I applied to my Lord.

Mr. Com. Serj. Who inform'd him, that several of *Wilson's* Creditors were paid their full Debts?

Edw. Sir *Laur. Carter* told me, his Brother had receiv'd his whole Sum of 120*l*. This was soon after the Composition; but he mention'd not the Time when it was paid.

Mr. Serj. Prob. Whether he ever charg'd *Wilson* with it?

Edw. Yes. And he said, That Money was lent him by his particular Friend, to pay off some little Debts, and keep him in Business; and therefore he was unwilling he should lose it.

Serj. Prob. Was this a new Debt contracted since his Failure, or before?

* It should be the 16th Article.

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Edw. I don't know.*Mr. Comm. Serj.* He says this Money was lent him by some Friends, to set him up again?*Mr. Lutw.* What *Mr. Wilson* said is not Evidence on either Side.*Mr. Comm. Serj.* Most of the Evidence given by *Mr. Edwards* has been only Informations from *Wilson* and *Sir Laur. Carter*; and yet the learned Manager objects, the same must not be admitted on the other Side. If any Favour is to be shewn, it should rather go in Support of Innocence.*Lords.* Go on! Go on!*Mr. Sol. Gen.* We don't oppose their going on. But we did not give Evidence of what *Wilson* said. We have prov'd the Petitions, the Orders, the Facts: We did not mention *Sir Laur. Carter*, it sprung from this Examination.*Earl of Maccl.* If what this Gentleman hath said, with Relation to *Wilson's* Payment to his Creditors, is no Evidence, it needs no Answer.*Mr. Comm. Serj.* Whether there was any Consultation among the Masters, and their Opinion of this Matter?*Edw.* I don't know of any.*Mr. Comm. Serj.* Whether he made any Acknowledgment for his being admitted into his Office, and to whom, and how applied?*Edw.* First, I applied to *Mr. Godfrey*, by whose Advice I applied to *Mr. Cottingham*; who told me, my Lord had left it intirely to the other Masters; for whatsoever that Place could fetch, was intended towards making up *Mr. Dormer's* Deficiency. I went again to *Mr. Godfrey*, and after a Meeting or two concluded to give 5000 *l.* Who went to my Lord I can't tell. I had not the Honour to see him before I was admitted. I had Directions, and did pay 5000 *l.* to *Mr. Rogers*, the Senior Master; and in three or four Days was sworn in.*Mr. Strange:* Whether he made Presents on his Admission?*Edw.* None but the Secretary's usual Fees.

Mr. Strange : Whether he knew how the 5000 *l.* was to be applied ?

Edw. Yes, *Mr. Godfrey* told me, it was not my Lord's Intention to take any Thing for the Admittance, but had left it to the Masters, to make the most of it, for the Benefit of the Office.

Mr. Comm. Serj. How the Money was imploy'd ?

Edw. Before *Mr. Rogers* surrender'd his Office, he paid me back the 5000 *l.* which I paid to the Suitors of the Court.

Mr. Strange : Whether he had any Discourse with the Masters before the Surrender, how *Mr. Dormer's* Effects were secured ?

Edw. No otherwise than upon this Treaty. I told *Mr. Cottingham*, that I heard of a Deficiency in the Office : Says he, I believe there is ; but how much I can't tell : You are to answer for no more than you receive ; Matters are all settled, that whatever it is shall be made good. He did not say by whom, or how.

Serj. Prob. Had you any Discourse with any other Master ?

Mr. Plumm. The Counsel says, with any other Master ; and the Gentleman at the Bar says, it was *Mr. Cottingham* told him so.

Serj. Prob. This Gentleman I'm examining, is one of the Masters. Therefore 'tis not improper.

Edw. I made the same Objection to *Mr. Godfrey* ; and he answer'd much the same. Page 83.

Serj. Prob. Whether he had not some Discourse with *Mr. Rogers*, how the Deficiency was to be made good ?

Edw. I don't remember any.

Mr. Comm. Serj. Whether at any other Time he had Discourse with any of the Masters about it ?

Edw. Often. When I came in, they were all of Opinion, this Deficiency was to be made good. I don't remember a particular Method.

Mr. Comm. Serj. Whether 'twas said, it would be made good, or was to be made good ?

Edw.

Edw. I don't remember. I took it to have the same Meaning.

Serj. Prob. Whether he hath not heard the Masters declare this Deficiency was to be made good, and by the Masters?

Edw. That they did not doubt but it would be made good; but I have often heard them say, they would not make it good. When I was admitted, Mr. *Roger's* paid 500*l.* and eight more of them, at several Times, 500*l.* a-piece. I heard it was towards making up this Deficiency; but can't say how far the Masters intended to contribute further.

Mr. Com. Serj. Whether he did not apprehend it was a great Concern to him.

Edw. Yes.

Mr. Comm. Serj. Then why he inquir'd no more into it?

Edw. I was told (I think by Mr. *Hiccocks*) that the State of this Deficiency had been laid before my Lord before I was admitted. I concluded, the Contribution of 500*l.* apiece had been in Concert with him. I know not, whether my Lord gave Orders that it should be so.

Mr. Robbins: What Answer Mr. *Hiccocks* gave to the Question?

Edw. Only, that my Lord was acquainted with it, and had the State of Mr. *Dormer's* Office before him.

Serj. Peng. They have been establishing the Notice of this Deficiency on the Earl, even before Mr. *Edwards* came in; so that the whole Transaction afterwards proceeded upon full Notice. The Evidence of the Contribution of the Masters, and of the Earl, prevents, in a great Measure, our Proof to the 15th Article.

Mr. Plumm. The very letting Mr. *Edwards* pay his 500*l.* to this Deficiency; and my Lord's not taking it to his own Use, is a Proof of his Knowledge. I desire to know, if he mentioned the Composition to the Masters; and whether they approv'd it?

Edw. I think one of the two or three Masters was Mr. *Lightboun*. He said, we might as well lose the Whole, as take so small a Part.

Mr. Plumm. If he consulted any of *Wilson's* Creditors, before the Composition?

Edw. No, I did not know any of them.

Serj. Peng. How much did he receive from the Masters?

Edw. 500 *l.* from nine of 'em.

Serj. Peng. Did any of, and which of 'em refuse?

Edw. Yes, Mr. *Lightboun*; but he gave no particular Reason.

Mr. Comm. Serj. Whether this Discourse was before or after the Composition:

Edw. I believe, before.

Mr. Comm. Serj. Whether he acquainted the Earl? Page 84.

Edw. I don't remember I did.

Then Sir *John Rushout* proceeded to open the 15th, 16th and 17th Articles: Urging, that the Crimes charg'd upon the Earl did not proceed from Mistake or mere Negligence; but were the Effects of Art and Contrivance, to carry on a corrupt Advantage to himself.

Sir J. Rushout opens the 15th, 16th and 17th Articles.

It may seem surprizing, that such a Person should condescend to receive, much more to use Stratagems to obtain Supplies to his insatiable Thirst of Lucre.

But you have heard there was a Deficiency in *Dormer's* Office; that the Earl knew it, that instead of Remedies, he used Methods to conceal it.

The Commons charge, in the 15th Article, that the Earl, to conceal this Deficiency, order'd the Masters to bring in their Accounts, to terrify them to contribute large Sums to answer the Demands of the Office; representing to them, that otherwise the Suitors Money would be taken out of their Hands: By which Means he induc'd nine of the Masters to contribute 500 *l.* a-piece, which several of them did out of the Suitors Money; after which they were never oblig'd to bring in their Accounts.

The Earl admits such Orders to bring in their Accounts: That the Masters did contribute as is charg'd; and that they were not afterwards obliged to bring in their Accounts.

But, in Excuse, he alledges, That it was not done to terrify the Masters: That what they contributed, they paid freely out of their own Money; That he follow'd a Precedent in the Failure of *Dr. Edisbury*; and that he continued to call for their Accounts, but was convinced how tedious an Obstruction it would be to the Business of the Court, and laid it aside; and observes, that what is lately done shews the Difficulties of the Undertaking.

He admits the Facts charg'd; but makes no Answer at all to that Part of the Charge, that it was done to conceal the Deficiency; nor to that of his representing to them, that otherwise the Suitors Effects should be taken out of their Hands.

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He says indeed, he had a Mind to know the State of the several Offices, to make Regulations; but the Thing was drop'd before he had this Knowledge given him, or made any Regulation; and yet he solemnly declares this was his whole Intention. If so, how came he to alter it so soon?

He was inform'd of the Miscarriage; he was conscious it needed Regulation; he had sometimes an Intention to make some: But it soon proved abortive, and the Reformation, however necessary, was laid aside.

Upon what Account was he advanced to the high Station, if not to secure the Property of the Subject? And upon what Account were the Monies deposited with the Masters; but for safe Custody, till Equity should determine the Right?

But when those intrusted were likely to ruin the Suitors, was it fit to cover up the Evil, because it was difficult to redress? Did not every Day increase the Mischief? Or could any Thing be more proper for the Business of the Court?

Upon

Upon the first Failure, in the Time of his Predecessors, an effectual Remedy was immediately applied: And those who have since attempted an helping hand, have prevented any new Eruption of the Evil. And if the Undertaking was attended with Difficulties, their Care and Zeal have already surmounted them in some Measure; tho' the Encouragements given them by this Earl had laid such a Foundation for those Difficulties, as if he had design'd to make them insuperable, to serve for such an Excuse.

None besides his Lordship can believe the Masters contributed freely; nor did they give it freely, or out of their own Money. Nor is the Crime charged, that they were prevailed on to contribute towards the Deficiency; but that he, whose Duty it was to take Care to redress it, did not, as in *Dr. Edisbury's* Case, provide that the Whole should be answer'd, but turned that Precedent to his own corrupt Purposes, and to conceal that Loss which it was his Duty to have prevented.

The 16th Article charges, that *Elizabeth Chitty* having obtain'd an Order upon Mr. *Edwards* for 1000*l.* Part of a large Sum paid into *Dormer's* Hands, Mr. *Edwards* complain'd of it; That the Earl would have persuaded the rest of the Masters to pay the Money to prevent Inquiry; and they refusing he paid it himself, with Intimations that she must not expect any more. Page 86.

He admits the Order made, that Mr. *Edwards* refused to pay the 1000*l.* that he said, that was all they must expect from him; but does not believe he persuaded the Masters to pay it.

Your Lordships must be convinced of the Guilt, when the Offender has not Assurance to deny it. You have now an Opportunity to vindicate the Honour of Parliaments; and to leave this Instruction to Posterity, that those, who foresee their unwarrantable Actions, will give Occasion for a parliamentary Inquiry, shall not evade the Justice of it.

As to the last Part of this Article, the Earl gives a large Account of the Cause, and the Or-

ders made in it: Upon all which Circumlocution, without any Denial of the Words charg'd, we have Reason to believe, without further Proof, that the Words were undoubtedly used by the Earl. But there is Reason to doubt, whether the Knowledge of a Deficiency had been so soon declar'd by him, if the Examination of the Accounts, had not already made a Discovery.

The 17th Article charges, that though the Earl knew of *Dormer's* Deficiency, he made Orders upon Mr. *Edwards* for several Sums, without Regard to Proportion. (¶) Your Lordships will perceive the Fallacy of his Answer. He knows not that any Order was made *by him*; but believes several were made *by the Court*. As if he was a Stranger to the Orders made by the Court, of which he was the only Judge.

He admits his Endeavour to conceal the Deficiency, but was persuaded it would be made good in Time, without any Grounds for that Persuasion, or any Mention when the Time would come.

He intimates, it was incumbent to make an *Average*, but not *ex officiis*; and yet it belong'd to Nobody's Office but his own.

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Thus the Answer either admits the Charge or evades it. What is admitted is sufficient to justify the Charge; and the Rest will be made out by Proofs.

Mr. *Sandys* enforces the same.

Then Mr. *Sandys* proceeded to enforce the same; and took Notice, by what Artifice of Words, and loose, general and evasive Expressions, by what *Fig-leaves*, the Earl endeavour'd to hide himself.

That the Earl stands, in a Manner, convicted by his own Confession. He admits the Fact, but would avoid the Consequence. He was convinced the Matter needed Regulation, but let it go on, because it would be difficult to redress it. But the Continuation of the Practice of an ill Habit, because it is difficult to break it, is so far from extenuating, that it is justly esteem'd an Aggravation. The Difficulty should have been a Spur, rather than a Check to it.

His

His Answer to the 16th Article is Prevarication throughout, and betrays more Guilt than an open and ingenuous Confession.

That any Judge should own the Knowledge of his Officers coming into Offices contrary to Law, without Censure or Blame for it, passes my Observation: But that a Person presiding in the highest Court, as his Majesty's Vicegerent, should also have the Assurance to make Use of that Knowledge, to extort Money from them, in Order to prevent the Discovery and Punishment, will stir up the greatest Indignation.

He apprehended the Terror of a Prosecution might have some Effect upon them, and engage them to comply with his Demands, though it had no Effect upon himself, whose Practices justly merited it. Page 88.

Our Ancestors kept in Awe the greatest Subjects; and none were too big to be called to Account for publick Wrongs. The Case of *Mich. de la Poole*, and Cardinal *Wolsey*, and others, are flagrant Instances.

Your Lordships have here one placed at the Head of the Law, conscious that his Actions are contrary to it, who makes no Scruple of avowing this to serve his Interest, defies a Parliamentary Inquiry, and goes on in Practices professedly illegal; and yet, to shelter himself from Danger, by an infamous Dissimulation, what he openly avows, to raise a Contribution from the Masters, he more publickly denies, to carry a plausible Appearance with the People.

Then Mr. *Thompson* proceeded on the 17th Article; observing that the Evidence is so clear and direct, that little need be said, either to shew the Necessity of the Accusation, or the Truth of the Facts. Mr. Thompson enforces the 17th. Page 89.

The Commons charge, that the Earl *knew* there was a Deficiency. He admits that, by saying, he *never endeavour'd to conceal it*: And Mr. *Edwards* has not only proved the Deficiency, but also that it was *laid before* the Earl before he was admitted.

Yet we shall prove, that he, from Time to Time, made Orders for Payment of several Sums out of the Office to carry on his unjust Designs, and prevent a Parliamentary Inquiry.

The Partiality charg'd in the latter Part of the Article sprung not from Neglect or Oversight, but from a deprav'd Intention and determin'd Corruption.

Mr. *Edwards* forewarn'd him of the Consequences, but was still bid to continue paying; and Mr. *Lightboun* reason'd with him the Unjustifiableness that some should have their whole Money, and others be left in the Lurch.

He says, he *never endeavour'd* to conceal *Dormer's* Deficiency: But he did it, and alledg'd, it would be for the Honour of the Court to conceal it.

He says, he was *under a full Persuasion it would be made good*. The Commons observe no Foundation for such Hopes.

Mr. *Edwards* (*Dormer's* Successor) frequently represented to him the Hazards to the Suitors from this Deficiency: Yet he boldly asserts, that Mr. *Edwards* was *under a firm Persuasion, the Whole would be made good*; tho' we shall shew, that he never had the least Prospect of it.

He says, *No Application was made to him, by Persons concern'd, to stop Payment*. I suppose, he means before that Motion which produced his extraordinary Declaration in open Court. Perhaps he will also explain *the Persons concern'd* to mean *the Suitors only*, and have Recourse to his old Subterfuge, that it never came *judicially* before him. Mr. *Edwards* was a *Person concern'd*, and his pressing Application ought to have been sufficient.

But he *did not think it his Duty ex officio, to make a Declaration of an Average*. And yet, to the 15th Article he pleads the Case of Dr. *Edisbury*, where an Average was declar'd. That Precedent was follow'd to encourage Contribution, but laid aside when it directed him to secure the Suitors.

He has, thro' all his Actions, copied Precedents from the worst Views. When his Predecessors took small Sums, he swell'd to exorbitant Prices; but as to their Caution in the Choice of Officers, he disdain'd to tread in their Steps. He has turn'd his Weapons upon himself; and if Dr. *Edisbury* guards him in one Article, he wounds him in another.

He *knows of no Orders made*, except in the Case of *Chitty*. We shall produce his own Orders for three several Payments; one of 400, another of 642, and a third of 2000 l.

This alone would support the Article; but he has thoroughly confirmed the Charge, where he says, he *believes, Orders have been made by the Court*. Though his own Orders were criminal, Orders from the Court were innocent, till stamp'd by his Guilt; who, knowing the Condition of the Office, commanded *Payments to be made as Orders came in*.

His Defence is again become his Accusation.

Then Serj. *Pengelly* began to examine the Witnesses: And Mr. *Conway* was sworn.

Serj. *Peng*. Whether he paid any Contribution, and when? We have the Receipt here. Mr. *Conway*
examin'd.

Conway. This is a Receipt given me by Mr. *Edwards*, Aug. 11, 1721, for 500 l. contributed by me.

He reads the Receipt to the Effect aforesaid.

Serj. *Peng*. In what Manner he paid it, and out of what Money?

Conw. Soon after I was admitted, Mr. *Dormer's* Deficiency broke out, and I was applied to, among the Rest, to contribute. I was sworn in, in *January* 1720, and this Receipt is in *August* 1721, when Mr. *Edwards* brought me some junior Masters Money, he stop'd out of it this 500 l. upon Account of the Contribution which I promised to come into.

Serj. *Peng*. Whether the 500 l. was allowed or deducted at that Time out of the Suitors Money?

Conw. It was stop'd by him at that Time.

Serj. Peng. What Persuasions were made Use of, to induce the Masters to pay this Money?

Conw. That Letter that came from Mr. *Dormer* from *Holland*, was sent to Mr. *Hiccocks* to be read before the Masters in the Publick Office; and the Masters spoke of it what they thought proper.

Serj. Peng. What Intimation of any Direction from my Lord *Macclesfield* relating to the Payment of this 500 l. Contribution?

Conw. My Lord *Macclesfield*'s Secretary was there. I think he said, the Consequence might be fatal to the Masters, if we did not take Care of this Deficiency.

Serj. Prob. When were the several Sums paid?

Mr. Sol. Gen. We only desire him to speak to his own Payment.

Conw. Mr. *Edwards* stop'd it Aug. 11, 1721.

Serj. Peng. Whether he paid it freely, or on what Grounds?

Mr. Sol. Gen. What induced him to pay it?

Conw. It was stop'd as a Contribution towards making up Mr. *Dormer*'s Deficiency.

Serj. Prob. Whether was any Promise or Agreement to pay it, and how long before?

Conw. In Febr. 1720.

And Mr. *Edwards*.

Mr. *Edwards* ascertain'd the Day of his receiving the 500 l. of Mr. *Conway*.

And Mr. *Lightboun*.

Mr. *Lightboun* sworn.

Mr. *Plumm*. If he was ever press'd to pay the 500 l. and by whom, and for what?

Lighb. Not long after Mr. *Dormer*'s Failure, Mr. *Cottingham* asked me, If the Proposal of advancing 500 l. a-piece had been mention'd to me? And said, it was propos'd to be immediately rais'd; giving some Intimation, that possibly we might have our Money again as *Dormer*'s Effects came in. I said, I had heard it talk'd of, but thought it a dangerous Precedent, and was resolv'd I would not contribute. He said, all the rest would. It was often mention'd to me by the Masters; and I was made uneasy for not having done it. In the Beginning of Summer 1722, having been

been sitting in the Court at my Lord Chancellor's House, his Lordship desir'd to speak with me, and said, he was sorry I had not contributed my 500*l.* for it would be attended with ill Consequences, if not taken Care of. He said it was the Proposal of the two *senior* Masters, but he approv'd of it. I answer'd, as it was theirs, and to serve their own Purposes, I hop'd his Lordship would not insist upon it. The two *senior* Masters had been long in their Offices, were grown in Years, and were willing to sell out at high Prices; but I was lately come in, and intended to continue in it, and would not concern my self in the Affair, unless the Office could be put on such a Foot, that the Suitors might be made safe. My Lord left me to my own Inclination, but advis'd me to *do as the rest did*, and not to stand alone: For if there was not some Measures taken, it might be of ill Consequence, and this was the *only Expedient* he thought of. I told his Lordship, I thought there were many others, but this I would not come into.

Serj. Peng. If after these Discouragements my Page 92.
Lord did not again demand Money of him?

Lightb. About the End of *July* 1724, Mr. *Cottingham* told me, my Lord had sent him to tell me, he wonder'd I had not paid my 500*l.* That there was 1000*l.* to be immediately paid to Mrs. *Chitty*, or Mr. *Lockman*, and his Lordship expected I would advance the 500*l.* and the Rest of the Masters 50*l.* a-piece, to make up the Sum. I told him, I would give his Lordship my Answer my self. Mr. *Cottingham* was angry; and assur'd me, he came with my Lord's Privy. I repeated, that I would give my own Answer, and send none by him. In a Day or two, Intimation was given that my Lord expected all the Masters to attend him. We imagin'd, it was a Call on the other Masters for more Money, and for my 500*l.* They had all declared to me, that they would contribute no more; and I desir'd them freely to declare their Thoughts before my Lord. We went; and my Lord told us, pressing Application had
been

been made to him by Persons of Distinction on the Behalf of Mrs. *Chitty* or Mr. *Lockman*; and then turn'd to me, saying, he was extremely surpriz'd that I had not paid the 500*l.* as the Rest had done. After he had used many Persuasions and Arguments, I told him, it was with great Concern that I refus'd to do any Thing his Lordship could desire of me; but this was of such dangerous Consequence, that I would not contribute one Farthing: That I had given him my Reasons before, and was ready to repeat them; but this was of most Weight with me, that it might be a Precedent, and look'd upon as an Undertaking for one another, and I would be answerable only for my own Debts: That, as I had not contributed towards the Misfortunes of others, I would not contribute towards Payment of their Debts: That I did not know, but the Contribution towards other Offices might make Deficiencies in our own: That I had always refus'd and never repented it, and had heard every Master repent the Doing it. I call'd upon the other Masters to deal ingenuously: And Mr. *Holford* said, he would never do it. Then my Lord said, he either would pay it himself, or take Care it should be paid.

Mr. *Plumm*. If my Lord *Macclesfield* used any Insinuations with Respect to the Parliament?

Lightb. My Lord said, the Consequences of our not contributing to pay *Dormer's* Debt, might be, that the Money and Securities would be taken out of our Hands. I told him, I was ready to deliver both the next Day, if I was properly indemnified. I think he said, This might produce a Parliamentary Inquiry; and if it should be resolv'd, that Purchasing our Places is contrary to the Statute, we might lose our Places. I replied, I would quit mine, rather than hold it upon those Terms of Paying other Master's Debts. He went on further about a Parliamentary Inquiry. I said, Let the Consequence be what it will, I would not pay it. Then I call'd upon the other Masters; who said, They would not pay it.

Serj.

Serj. Prob. What particular Expression my Lord used, as to the Paying the 1000 l.?

Lightb. I cannot remember at this Distance of Time, whether he said, he *had* or *would* take care to pay it. I speak as to the Tenor or Purport of our Conversation; I would neither aggravate nor soften Matters.

Mr. Holford sworn.

And Mr. Holford.

Serj. Peng. Whether he was present, when the Masters were requir'd by my Lord, to raise this 1000 l.

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Holf. I was. [N. B. His Evidence is in Substance the same with Mr. Lightboun's.]

Mr. Plumm. In what Manner did my Lord address himself to Mr. Lightboun?

Holf. Pretty sharply.

Serj. Peng. Whether any Person ask'd my Lord, in what Manner this Matter might come before the Parliament?

Holf. I did. And he said, it might come in by the Committee for Courts of Justice: But, when I came out of the Room, I said, it was more likely to come in by Way of Complaint.

Serj. Peng. What was said about the Contribution?

Holf. It was disagreed to: And then, my Lord said, *he himself would pay the 1000 l.*

Serj. Peng. We leave that, as a Circumstance of his endeavouring to prevent a Parliamentary Inquiry?

Serj. Prob. Whether there was not, at any Time, a Proposal made, that if they might be maintain'd in their Offices, as they then were, they would consent to a Contribution?

Holf. I do not remember that. I believe, it was mention'd, whether on that Supposition, that if the Masters might be continued on the Foot they were, they would not think it worth their while to do it. I said, it was fit to be consider'd: But there was no Method propos'd but what seem'd difficult; and I do not remember any Thing was agreed to.

Mr. Strange:

Mr. *Strange*: Whether, after they had contributed the 500*l.* a-piece, their Accounts were call'd for by my Lord, as before?

Holf. I do not know but they might. There was a Writing left in the publick Office, in which there was many *Items*, in what Method those Accounts should be brought in. I had prepar'd mine; but they were not call'd for; so I laid mine by.

Mr. *Common Serj.* Whether this Discourse about raising Money was to pay off the whole Deficiency, or confin'd to this 1000*l.*

Holf. I remember no Proposal, but only a Discourse started. I did not apprehend the whole Deficiency was intended to be paid; for I never knew any Body could tell what the whole Deficiency was, till of late. I speak from nothing but my Memory.

Mr. *Common Serj.* Whether there was not in *November* last, an Intimation to the Masters, and to him in particular, to bring in their Accounts?

Holf. Yes.

Mr. *Common Serj.* How comes it that you say you have them by you still?

Holf. You misapprehend me. The Account I mention'd before, was what was immediately call'd for, after the Failure of Mr. *Dormer*; but the Account in *November* last was what was call'd for by the Judges, and deliver'd in to the Council.

Earl of *Maccl.* What the particular Directions as to those Accounts were; and if they were drawn up accordingly?

Holf. Those Directions were many. I did not draw up my Account exactly according to those Directions.

Earl of *Maccl.* Whether they were not the like Directions as in *November* last; and whether the Masters did not think it impracticable to draw it up accordingly?

Holf. Yes.

Sir G. *Oxenden*: Whether it was requir'd by my Lord Chancellor, to look into *Dormer's* Deficiency?

Holf.

Holf. I heard that my Lord had order'd Mr. *Edwards* to deliver in an Account of Mr. *Dormer's* Office to me and Mr. *Bennet*: Accordingly he did; but it was done in haste, and we could not depend on it.

Serj. Peng. I desire Mr. *Holford* may explain what he meant by *the Foot the Masters then stood on*? What Liberties and Privileges were meant by that Expression.

Holf. Their continuing in the Possession of the Money.

Serj. Peng. To lock the Money up in a Cabinet, or to have the Power to make use of it?

Holf. For my own Part, I should not have lock'd it up.

Mr. Lutw. Whether he deliver'd any Account to the Earl, till the Order made by the Council?

Holf. I deliver'd an Account to him, or to Mr. *Cottingham*, of the Money, but not of the Securities.

Mr. *Edwards* call'd again.

And Mr. *Edwards*.

Serj. Peng. What Application was made to him for Mrs. *Chitty's* Money? and by him to the Earl on that Occasion?

Edw. There was an Order made by my Lord, and brought to me, for the Payment of 1000 l. to Mrs. *Chitty*. I told the Party, that I had not Money of Mr. *Dormer's* sufficient to answer the Demand upon the Office. I went to my Lord (I had been forc'd to trouble him pretty often upon that Occasion), and told him, It gave me great Uneasiness, that there was not a Fund in my Hands to answer the Demands upon my Office: And that I hop'd he would take Care that there should be a Supply, or else not make Orders upon me for Payment. I understood by his Answer, that, if the People would but have a little Patience, he was doing every Thing necessary for the Purpose.

Serj. Peng. Whether he said any Thing relating to the Suitors of the Court?

Edw. Several Times I told him, there was like to be a great Deficiency: All that had been rais'd
out

out of *Dormer's* Effects was exhausted, and there were many Demands; and I hop'd Provision would be made to answer them, and that it was not expected I should do it.

Serj. *Peng.* Was any Thing represented at that Time, concerning paying some of the Suitors, and not others?

Edw. About that Time, or since I told him, the Masters were determin'd not to make any further Contributions: And if there was to be no further Supply, it would be very hard for some to have all, and others none. My Lord said, I will take all the Care I can, and hope to make every Body easy.

Page 95.

Mr. *Lutw.* Whether he had not paid all the Money, or near all, when this Discourse happen'd?

Edw. Yes.

Mr. *Lutw.* Whether he was at the Meeting of the Masters, when this 1000 *l.* was insisted on, and on what Occasion?

Edw. Upon a Summons to all the Masters, I think about the latter End of *July*, we waited on his Lordship about six o'Clock, [*&c. as before in Mr. Lightboun's Evidence.*]

Earl of *Maccl.* Whether the Subject of this Discourse was the Payment of this 1000 *l.* or making good the Whole of *Dormer's* Deficiency?

Edw. This 1000 *l.* only.

Earl of *Maccl.* You understood it so?

Edw. And the Reason was, because if Mr. *Lightboun* would have paid his 500 *l.* and the other Masters 50 *l.* a-piece, it would have made up the Sum.

Earl of *Maccl.* Was the Proposal of Paying 50 *l.* a-piece after Mr. *Lightboun* had refus'd the Payment of 500 *l.*

Edw. I believe it was.

Earl of *Maccl.* What Occasion for the Proposal to pay 50 *l.* a-piece, when that of 500 *l.* was absolutely refus'd?

Edw. I believe it was understood, that if the other Masters would have contributed 50 *l.* a-piece,

it would have been an Inducement for Mr. *Lightbourn* to have paid his 500*l.*

Earl of Maccl. Some Body must propose this that had that Apprehension?

Edw. I cannot say who propos'd it; but 50*l.* a-piece was mention'd.

Earl of Maccl. Whether the Masters did not agree to make good *Dormer's* Deficiency?

Edw. I remember a Meeting of the Masters at your Lordship's House, not long before this, where they seem'd inclinable to agree, that if they were continued in the Rights of their Office, on the same Foot as they had enjoy'd them, they would have endeavour'd to have made this Deficiency good.

Earl of Maccl. If he hath not said, that on his coming into the Office, the Masters told him, they would make good the Deficiency?

Edw. I cannot say the Masters ever told me, they would make it up.

Earl of Maccl. Whether when you was with me, you did not say, the Masters did promise to make it good, or else you would not have come into the Office?

Edw. I do not remember I told your Lordship so. I believe, it was design'd by the Masters to have it made up; if not the Whole, the greatest Part of the Masters were inclinable to make up the Deficiency.

Earl of Maccl. Whether he did not say, the Masters did promise him to make good the Deficiency?

Edw. I do not remember that I said so directly. I told your Lordship, that unless I had had Assurances that the Deficiency would have been made up, I never would have meddled with it. These Assurances I had from Mr. *Cottingham* and Mr. *Godfrey*.

Earl of Maccl. Had you two Meetings with me in *July* or *August*?

Edw. I think there were Two in the same Month of *July*. The two Meetings were within a Month.

Earl

Earl of *Maccl.* Whether the Masters have not made several Complaints to me, of the Invasion of their Right in their Offices, and desir'd me to make an Order to redress them?

Edw. Not only Complaints; but I believe those Complaints were laid before your Lordship in Writing: There were frequent Complaints by Concurrence of all the Masters.

Earl of *Maccl.* How long before that were Complaints made to me, of the Masters being injur'd in the Profits of their Office?

Edw. I believe, near a Twelvemonth.

Earl of *Maccl.* No more?

Edw. Full a Year.

(*Earl of Macclesfield shews Mr. Edwards a Paper*)

Edw. This is the Representation I mention'd.

Earl of *Maccl.* Pray look upon that,

(*Shewing him another Paper.*)

Earl of *Maccl.* Are these two Papers sign'd by you, and the other Masters there nam'd?

Edw. Yes.

Earl of *Maccl.* Whether I was not much press'd by the Masters to have made some Alterations in the Proceedings of the Court? And what Answer did I give?

Edw. Upon this Representation many Applications were made to my Lord. I went several Times my self. Sometimes Two or Three would make Application to him, that if he thought the Matters represented to be Grievances, he would please to redress them. My Lord said, he thought our Complaint was just, and he would take all proper Measures to rectify it.

Earl of *Maccl.* Why were not these Things set right?

Edw. These Matters were not laid together at once before my Lord: And my Lord said, he would have us draw up a State of all these Grievances, for him to see, under one View.

Earl of *Maccl.* Was any Order made, in Favour of the Masters, and to redress these Grievances?

Edw. We were impatient that no Order was made; and often solicited on several Accounts before they were made.

Earl of *Maccl.* For what particular Reasons were you so impatient?

Edw. Many Instances, relating to the Proceedings and Innovations at the Rolls, to the Prejudice of the Masters.

Mr. *Plumm.* These Gentlemen applied to Lord *Macclesfield* to redress Grievances; but he would not promise them a Redress, till they paid this Debt.

Sir *Geo. Oxend.* I desire to know what he means by the *Profits of the Office*?

Edw. The principal Thing I mean, is the Keeping of the Money; but in several other Things we thought our Offices lessen'd, by taking away the customary Fees.

Sir *Geo. Oxend.* If the Profits of the Office was the Keeping the Money, I suppose they made use of it?

Edw. Yes. I believe it was not understood by any Body, that the Money was to be lock'd up. By the Profits of the Money is meant the putting out the Money at Interest for our selves. But that is not all; the Placing it out at Interest for the Suitors, occasions several Perquisites, as Reports and other Things, which would be lost by Taking away the Money.

Mr. *John Bennet* call'd again.

And Mr. *John Bennet.*

Mr. *Sol. Gen.* Whether he was present at the Meeting at the Lord Chancellor's, when Proposals were made for raising this 1000*l.*

Benn. I was, [*And gives the same Account in Substance, as before, by Mr. Lightboun, &c.*]

Mr. *Lutw.* Whether any Thing was said concerning the Consequences of not paying this 1000*l.* and any Mention of *Dormer's* Deficiency?

Benn. There was Mention of that Deficiency; and one Master said it was a *Bottomless Pit*: And as my Lord had desired me and Mr. *Holford* to take some Account of it, we both declar'd, we had not receiv'd a satisfactory Account from Mr.

Edwards to be depended upon, and that the Deficiency appear'd to us to be very uncertain.

Page 97.

Mr. *Lutw.* Whether any Mention was made of any Fear of a Discovery of that Deficiency?

Benn. It was said in that Conversation, (but I cannot say by whom,) that if this 1000*l.* was not paid, the Deficiency of Mr. *Dormer's* Office would be discovered.

Mr. *Lutw.* Who were then present?

Benn. I believe all the Masters with the Earl of *Macclesfield*.

Mr. *Lutw.* Were not all the Masters against making up the Deficiency?

Benn. Yes.

Earl of *Maccl.* Was *Dormer's* Deficiency then known?

Benn. It was known abroad; but not how much.

Earl of *Maccl.* Were there two Meetings between me and the Masters in *July* or *August*?

Benn. I believe, within a Month, there were.

Earl of *Maccl.* What was the Subject of the other Meeting?

Benn. The first was to put us in Mind of our Duty, and to admonish us to avoid any Complaint.

Earl of *Maccl.* Was any Thing said about *Dormer's* Deficiency?

Benn. I do not remember there was.

Earl of *Maccl.* What Admonition was given to the Masters, and what was said, in case they fail'd in their Duty?

Benn. Generally, to take care to perform our Duty, not to give any Cause of Complaint; and in particular not to go out of Town, till a Week after the last Seal.

Earl of *Maccl.* Do you not remember, that I said, if any Master fail'd in his Duty, I ow'd it to the Rest, to make him an Example?

Benn. I believe you said so.

Mr. *Lutw.* Was any Thing then said about your Accounts?

Benn. I do not remember it.

Earl of *Maccl.* In Point of Regularity, when these Gentlemen speak of this 1000 *l.* they should produce the Order.

Serj. Peng. 'Tis here; 'tis admitted in the Answer.

The Order produc'd, and prov'd by Mr. Paxton; who began to read it.

" *Martis 17^o die Martii, Anno Regni* Order 17 March
" *Georgii Regis 10^o. [the ordering Part of* 10 Geo. read.
" *which is]* That the said Master do, out of
" the said Money in his Hands, pay unto
" the Defendant, *Eliz. Chitty*, 1000 *l.* and to
" the Plaintiffs 500 *l.* subject to the further
" Order of this Court.

Mr. Lovibond sworn.

Mr. Lovibond
examin'd.

Mr. Lutw. Whether he was at the Meeting at Lord *Macclesfield's*, about *July* last, and what pass'd at it?

Lovib. I was, [*And agrees with the former Masters, as to what pass'd there.*]

Mr. Lutw. Whether any Thing was then said in relation to the Deficiency of *Dormer's* Office?

Lovib. Yes. And my Lord express'd himself, as though it would be an unlucky Thing, and it must be made up one Way or other; and desir'd the Masters to think of a Way to make it up. Page 98.
He said, If you can have the Enjoyment of your Places, as you have had them these forty Years, will you come into some Terms to make up that Debt? Some seem'd to agree, and others would not.

Earl of *Maccl.* Whether he did not agree, that this Deficiency should be made good by annual Payments?

Lovib. No.

Earl of *Maccl.* Whether the Rest of the Masters did not?

Lovib. Some did.

Earl of *Maccl.* Whether they did all agree?

Lovib. I believe the major Part did.

Earl of *Maccl.* Did any besides your self disagree?

Lovib. I cannot tell.

Earl of *Maccl.* If it was not endeavour'd to find out a Way, to make up whatsoever Deficiency there was; and whether the making Good the 1000 *l.* or the whole Debt, was the subject Matter?

Lovib. Making good the whole Debt; as I understood it.

And Mr. T.
Bennet.

Mr. *T. Bennet* call'd again.

Benn. I beg the Favour to mention a Thing that slipp'd my Memory yesterday. Lord *Macclesfield* then ask'd me, what Estate I had purchas'd? I said 68 *l. per Ann.* in *Kent*, and 40 *l. per Ann.* in *Suffolk*. I forgot a House I bought for 700 *l.* which is mortgag'd for the same Sum. I referr'd to my Account which lies upon the Table.

Mr. Solicitor Gen. Whether he was present at the Meeting at the Lord *Macclesfield's*?

Benn. Yes [and gives the same Account of it in Substance, as the other Masters did.]

Then the Order, in the Cause of *Harper and Case* was prov'd and read by Mr. *Paxton*, dated 5 Dec. 11 Geo.

Serj. *Peng.* This is a Direction to Mr. *Edwards* to see, whether there was likely to be any Loss of any Monies deposited with Mr. *Dormer*.

Mr. *Lockman* sworn.

Serj. *Peng.* Whether he attended the Earl, relating to any Money, and where?

Lockm. I receiv'd an Order from my Lord *Macclesfield* upon Mr. *Edwards* for 1000 *l.* But not being able to receive it of him, I went to *Kensington*, and told his Lordship the Necessity I had for it. He told me, if I apply'd to him in Town, I should have the Money paid. Accordingly I did, and he then told me, he had enquir'd into the Affair relating to that Money; that it was in Mr. *Dormer's* Office, where there was a Deficiency; that he could not yet bring all the Masters to settle that Matter. I attended him several Days, and spoke to Mr. *Cottingham*, who told

Page 99.
An Order of
Court between
Harper and Case
read.

Mr. *Lockman*
examin'd.

Page 100.

told me, there had been some Motions made by *Serj. Chesbyre*, &c. which had fright'ned the Masters from raising Money, but he would do what he could for me. I waited again on Lord *Macclesfield*, and told him, the next Day was the last Day for me to pay my Composition with my Creditors, and that I had made no other Provision. His Lordship order'd me to attend him the next Morning at *Westminster*, and there told me, Mr. *Cottingham* should pay me the 1000 *l.* but he believ'd this would be the last Mrs. *Chitty* would receive; none of the Estate of Mr. *Dormer* being left.

Mr. *Doddingt.* What the whole Sum was that was paid in?

Lockm. About 10000 *l.*

Serj. Peng. If the Earl gave any further Reasons, why it was like to be the last?

Lockm. Not at that Time: But he had before told me, the Masters were apprehensive of losing their Privileges; and therefore were not willing to advance any Money.

Mr. *West*: Whether he receiv'd any Intimation as to the Keeping of this private?

Lockm. Not at that Time: But afterwards Mr. *Cottingham* told me, I should say nothing of it.

Earl of *Maccl.* Whether he did not look upon it, that I did this out of Compassion to him?

Lockm. I took it as Part of a Sum of Money due.

Earl of *Maccl.* Whether he did not desire a further Sum, after this; and how much? Page 101.

Lockm. When I saw your Lordship afterwards, I ask'd if it was not possible to have another 1000 *l.* You said, there could be no more paid.

Earl of *Maccl.* Whether he did not ask a further Sum of 500 *l.* or 570 *l.*

Lockm. There was an Order, on a Letter of Attorney from Mrs. *Chitty*, for 500 *l.* but I do not know when 'twas paid. But after your Lordship had told me that 1000 *l.* was all that could be obtain'd, I desisted from asking any more.

Mr. Common Serj. Whether he can be certain as to the Expression, whether this was the last Money that was like to be paid, or that my Lord would pay?

Lockm. As I remember the Words were, *If the Lady hath no other Fortune than what is in Chancery, in the Master's Hand, this will be the last of it.*

Mr. Atwood sworn.

Mr. Atwood
examin'd.

Serj. Peng. Whether he was in Court, when a Motion was made, upon an Order in a Cause between *Harper* and *Cafe*?

Atw. I was at my Lord's House, where, about the 5th of *Decemb.* last, the Motion was made. I was Solicitor for *Mrs. Harper*. There was an Estate decreed to be sold, and the Money was to be paid into *Mr. Dormer's* Hands. The Money was accordingly paid, the Conveyances approv'd of, and a Fine agreed upon: But at last the Parties would not execute, unless the Money was paid them; objecting, there would be a Deficiency in *Dormer's* Office: Therefore they mov'd, that they might not be oblig'd to execute the Conveyance, till the Money was paid to the Plaintiff. My Lord declar'd, he *had heard there would be a Deficiency of Mr. Dormer's Effects, but it had never judicially come before him; and what Knowledge he had of it, was only as publick News;* and referr'd it to *Mr. Edwards*, to examine, whether there was likely to be a Deficiency, or not. I was near two Months before I could get the Order pass'd; and then the Impeachment came on. The Register told me, He was afraid this Order would do some Mischief. When I had got the Order, I was told by several, that *Mr. Dormer's* Effects were very deficient, and that my Lord had directed a Composition to be made with *Wilson* for Half a Crown in the Pound, and that others had twenty Shillings. My Lord had directed an Enquiry, *Whether any Deficiency?* I was advis'd to put in these Words, *By what Means?* Because I was told then it was by Reason of

of Compounding that Debt with *Wilson*; but the Register would not let them stand.

Serj. *Prob.* Whether those Words were not added by himself to the Order?

Atw. Yes; before it pass'd.

Serj. *Prob.* When?

Atw. After I had the Order from the Register.

Serj. *Peng.* When was that?

Atw. It was near two Months before I could get the Order pass'd.

Earl of *Maccl.* Had you the Order pass'd before Page 102. the Impeachment?

Atw. Yes, I believe I had.

Earl of *Maccl.* Was it before this Matter came into Parliament?

Atw. I do not particularly know.

Earl of *Maccl.* Was it after I had parted with the Seals?

Atw. I believe, after.

Earl of *Maccl.* How long was it before you added those Words?

Atw. Two or three Days after I had got the Order.

Earl of *Maccl.* When was it the Register struck out those Words?

Atw. I believe before the Impeachment. The other Side had let them stand, but yet the Register struck them out.

Earl of *Maccl.* Was it after I had ceas'd to be Chancellor?

Atw. I believe it was.

Earl of *Maccl.* Was any Thing said at that Time, of *Wilson's* Breaking, and *Poulter's* going off?

Atw. I remember your Lordship said, *Wilson* was become Bankrupt, and had Money of *Dormer's*, and that a Person was sued by *Wilson*, and a Recovery against him, and an Action brought for an Escape; and you concluded, that all you knew of the Matter was, *only as publick News*.

Dr. *Sayer*: Whether my Lord did not express a Doubt, how these Matters might come out?

Atw. I do not know.

Serj. Prob. Whether there was any Notice taken, how this might come out, when the Report of the Masters should be made?

Atw. I do not remember any Thing tending that Way.

Mr. Common Serj. Took you any *Memorandum* of those Words, and when?

Atw. I took no *Memorandum* till I was summon'd to attend the Committee.

Mr. Common Serj. How he comes to forget Facts, and remember a Form of Words?

Atw. I do not remember all the Facts that have been ask'd.

Mr. Robins : Whether my Lord did not mention a particular Sum that was owing from *Wilson* to *Dormer*?

Atw. I believe he mention'd 18000*l.*

Mr. Robins : Did he not mention that *Wilson* had brought an Action of Escape against the Marshal?

Atw. Yes.

Mr. Robins : Did he not mention, *Wilson* had recover'd Judgment against the Marshal?

Atw. Yes.

Mr. Robins : Whether was there any Thing said of *Poulter's* Escape?

Atw. My Lord mention'd an Action brought against the Marshal for that Escape.

Mr. Common Serj. Whether my Lord having mention'd these Particulars, he did not from thence infer, he could not then tell, how Matters might come out?

Atw. I do not remember any Thing of that.

Mr. Lutw. The Lord *Macclesfield* saith in his Answer, he doth not believe he had any Discourse with the Masters about the Payment of this 1000*l.* I submit whether there are not four or five Witnesses to it.

Mr. Solicitor General : We shall now lay before your Lordships three or four Orders, for the Proof of the 17th Article.

Mr. Ralph

Mr. *Ralph Paxton* prov'd the several Orders following, which were then all read. Four Orders prov'd and read.

An Order, dated 18 *January*, 8 Geo. in a Cause between *Jones* and *Fett*.

Another, dated 8 *March*, 8 Geo. in the same Page 103. Cause.

Another, dated 5 *July*, 8 Geo. in the same Page 104. Cause.

Another, dated 22 *December*, 9 Geo. between *Sutton* and *Sheldon*.

The Orders were shewn to Mr. *Edwards*. Page 105,

Mr. *Lutw.* Whether Mr. *Edwards* paid any Money in the Cause of *Jones* and *Fett*?

Edw. The whole Money order'd, by those several Orders, hath been paid by me, out of Mr. *Dormer's* Effects.

Earl of *Maccl.* Mr. *Edwards* is a little mistaken. Here are three Orders in one Cause, and one in another. Whether was the whole Money paid in both Causes?

Edw. In that of *Jones* and *Fett*, the whole was paid; in that of *Sutton* and *Sheldon* but a Part.

Mr. *Lutw.* Mr. *Edwards* told your Lordships before, that all the Money, arising out of *Dormer's* Effects, was paid out and gone. Page 106,

The FOURTH DAY. Monday, May 10. ivth Day,

The Lords being seated, and all Parties plac'd, and Proclamations made, as before, the Lord Chief Justice King signified to the Managers that they might proceed.

Then Mr. *Plummer*, (after a short Introduction, concerning Prosecutions of this Kind in general, and the Necessity of this in particular,) open'd the 18th Article, as follows. Mr. Plummer open'd the Eighteenth Article.

The Substance of the Charge is a wilful Neglect of his high Office, that he did not restrain the Masters from trafficking with the Suitors Effects, tho' he was fully inform'd of the Dangers.

This

Page 107.

This is greatly aggravated by his corrupt Views, and the pernicious Consequences.

In his Answer he denies his knowing how the Masters dispos'd of the Suitors Effects. Such an Ignorance would have been criminal: But we have the clearest Proofs (and it has already been prov'd) that he did know it. The Earl himself, in his further Answer, confesseth it, by saying, that after *Dormer's* Misfortune, he thought of several Methods; and several Proposals were made to him, to prevent the like for the future. *Dormer's* Misfortune was his trafficking with the Suitors Effects: And this the Earl knew; which is one of his Inconsistencies.

He believes, it will not be held criminal in him, not to have establish'd any of the Proposals; some Things being thought impracticable, some insufficient, and some inconsistent. This is so gross, I'm afraid, if I took it in Pieces, I should appear ludicrous, which I shall avoid.

But, would not a Stranger imagine, that he had quitted the Seal soon after *Dormer's* Failure? Whereas he continu'd Chancellor above four Years after: During all which Time he knew the Master's Affairs were in great Disorder, and wanted Regulation. But, because he could not think of a Scheme to answer *all his Designs*, he therefore has done *nothing*. I'm afraid, the letting the Masters go on, without any Check, was the Scheme most to his Satisfaction, in order to his making an exorbitant Gain by the Sale of their Offices.

He farther answers, that he remembers no Proposal, that *he thought* would take it *totally* out of the Power of the Masters, or *effectually* secure the Cash. Words thrown in with great Caution!

We can prove a Proposal made to him, that would have done it in great Measure; which he has in his Hands: And the Strength of his Defence lies in the Caution of his Answer. But if any Proposal was made, which would have cur'd the greatest Part of the Evils, 'tis criminal in him not to have made Use of it; and the rather, because he substituted no other.

He

He admits, he took no Security of the Masters, and says, he was never ask'd so to do. We will prove, that he was ask'd so to do; and that taking Security was Part of the Proposal.

He takes Notice of his wiser Predecessors, who took no Security: But if such Misfortunes had happen'd, and such Application been made, in his Predecessors Days, they were so wise, they would have applied a proper Remedy.

Mr. *Lightboun* made the Proposal; professing his Abhorrence of the Masters abusing their Trust, and desiring my Lord to put a Stop to it. And 'tis a great Aggravation, that the Chancellor should continue to act with such mean low Views, as were unbecoming a Master in Chancery, when he had the Assistance of a Master, who behav'd himself as would have been becoming the Lord Chancellor.

Then Mr. *Cary* supported the same Charge, by making an Observation or two, in Substance, following.

Mr. *Cary* supported the same.

The Earl says, he never knew how the Masters dispos'd of the Suitors Money. 'Tis much the same whether he knew it, or not. Did he (who order'd the Money) know nothing of their Power over it? Was he the only Man that knew nothing of their Deficiency? And, if so, is that Ignorance an Excuse or Aggravation? But we shall prove, that he was told of it, and foretold the Consequences.

Page 108.

And who gave him this Warning? One of the Masters, interested in the Traffick; a Gamester at the same Table. Nothing but Justice could have extorted it; nothing but the blindest Avarice prevented the Compliance with it. But he had several Proposals, and from several of the Masters. Mr. *Kynaston*, and others, propos'd to give Security; with which he then appear'd pleas'd, tho' he afterwards dislik'd it. It was too reasonable to be refus'd, and too self-denying to be follow'd. So far was he from acting consistent with it, that, soon after *Dormer's* Failure, after these Proposals made, he sells the Offices of several Masters

Masters at most exorbitant Prices. The only Expedient! The only Method of Cure the noble Earl brought to Perfection!

The Gentlemen embark'd in the same Bottom, saw the Ship sinking, and propos'd throwing over Board Part of their unjustifiable Gains, to prevent their general Wreck: But he not only boldly steers on the same Course, but takes in more Weight of Guilt, in Neglect, if not Defiance of the Danger.

He admits several Proposals made. And, because some were not answering the full Idea of Perfection propos'd by him, nothing is attempted: But the Inconsistency of the Proposals with his private Views was the only Reason.

He says, he gave no Permission or Encouragement to the Masters, to traffick with the Suitors Money. But he knew it; he had Power to prevent it: And surely, to know, and not prevent it, in his Situation, was to permit it; and his Example was an Encouragement.

Mr. Lightboun
exam'd.
Page 109.

Mr. Lightboun call'd.

Mr. Plumm. Whether he had any Discourse with my Lord, about putting the Offices of Masters into a better Regulation?

Lightb. [After repeating some of his Evidence before given, proceeds, in Substance, thus.] I told him, if a proper Expedient could be found out to pay Mr. Dormer's Deficiency, and prevent the like, I should be glad to contribute to such Regulations. He ask'd me, if I could think of any Method? I told him, if the future Securities were taken in the Name of the Master, and one or more of the Parties, the Suitors would be safe; or in the Name of two or three, or more of the Masters, as the Court should think proper. My Lord express'd great Satisfaction at this Proposal: And then ask'd, in what Manner Dormer's Deficiency would be provided for? I said, if Part of the Cash in each Master's Hand was plac'd out at Interest, in the Name of all the Masters, the Produce would raise a Fund to pay Mr. Dormer's Debt, and such Securities were easily converted into

into Money. I believe I did mention 3, 4, or Page 110.
5000*l.* for each Master; which would amount to
40 or 50000*l.* and in Time raise a Sum of Mo-
ney to answer the Deficiency. My Lord made
some Doubts; but said, he would be glad to give
his Assistance. I also took Notice, that if some
Security was taken from the Masters, it might be
of Service. He said, something might be grafted
on this Plan; and desir'd me to put it in Writing.
I did not communicate the Proposal to the other
Masters; but sounded them, how any Proposal of
this Kind was agreeable to them. Most of them
were averse to it: Some were rather willing to
contribute annually. In about a Month I wrote a
Letter to his Lordship, to the Effect of what I
had propos'd, except in some Instances which I
found other Masters averse to: And I sent it to
my Lord by my Clerk, about *June* or *July* 1722.
but kept the original Draught.

Mr. *Plumm.* Whether ever he spoke to my
Lord about it?

Lightb. I think I did say, in the Presence of
some of the Masters, when my Lord talk'd of
taking *Security* in several Masters Names, that
he would find that Proposal in the Letter I writ
to him at such a Time. He did not deny it.
But, not long before *Christmas*, he mention'd this
Letter to me, and said, he had it by him.

Mr. *Plummer* moving it, the Draught of that His Proposal
Letter was produc'd, and prov'd, and then read.

read by Mr. *Baily*; dated 19th *July* 1722,
and in Substance, as before deposed.

Mr. *Plumm.* What he meant, where he says Page 111.
[in his Letter] the Masters have *different Views*?

Lightb. To put his Lordship in Mind of what
I had said, when he told me, the Proposal of a
Contribution came from the two *senior* Masters;
I said, their Design was only to *skin over this*
Wound till they could get out; that one of them
had slip'd out already, and another was about
getting out: But I propos'd to spend my Days in Page 112.
the Service of the Court. Therefore, that their
Design

Design was to get out, and mine to continue, was what I meant by different Views.

Mr. *Plumm*. Whether he used any other Inducements to my Lord, to make some Orders relating to the Masters?

Lightb. A long Time after, when the Masters apprehended themselves aggrieved, by the Variation which the Master of the *Rolls* had made in the Practice of the Court, by directing all the Suitors Money to be brought before his Usher, and sometimes put out without the Master's Approbation, we had several Meetings. We went to my Lord, and acquainted him of our Grievances, in a Representation reduc'd into Writing. After he had had it some Time, and nothing done, we frequently importun'd him to consider the declining State of our Offices. My Lord said, he would have a Conference with the Master of the *Rolls* and the Masters: But that being delay'd, the Grievances grew greater, and we more troublesome to my Lord. He then said, there was a Necessity of redressing all the Grievances; and it would be best to do all together. With this we were put off for some Time: But on further Solicitation, his Lordship desir'd a Particular of the Grievances to be laid before him in Writing; and intimated to have it put into the Form of Orders necessary to be made. A second Representation was deliver'd to him: And, after some Time, there was a Meeting at my Lord's, and a good deal of Discourse about the Money: But Heats arising about Jurisdiction, little was done; this Representation was sign'd by all the Masters; and drawn up at my Lord's Request. I don't know whether his Lordship will produce it. Some Things may seem to bear hard upon the Master of the *Rolls*; but it was written when the Court of Chancery was in a State of War.

Mr. *Plumm*. If he ever laid before my Lord the Expectations of the World, that he would reform these Grievances?

Lightb.

Lightb. I have press'd it more and oftner than became me; and was surpriz'd that my Lord did not do something, tho' I soon found, he would do nothing in it. I press'd it home to him, and thought he made Difficulties where there were none. I thought he wanted his usual Resolution, and told him, if he did not redress these Grievances, I despair'd of seeing them settled, unless my Lord *Lechmere* succeeded him.

Serj. Prob. When the first Application was made by the Masters for Redress?

Lightb. I believe, two Years ago, or more: I cannot tell the Time.

Serj. Prob. Whether there was any second Application, before the Representation in Writing?

Lightb. Immediately upon the Master of the Rolls's directing the Money to the Usher, the Masters went to my Lord. I believe, it was before *Christmas* 1722, Mr. *Holford* may remember better.

Serj. Prob. When that Meeting was between the Chancellor and the Master of the Rolls?

Lightb. I believe, the Beginning of last Summer.

Serj. Prob. Who was present?

Lightb. My Lord Chancellor with the Great Seal, the two *senior* Registers, in their Habits, with Pen, Ink and Paper; the Master of the Rolls, and all the Masters in their Gowns, and the Secretary and Usher. The Masters hop'd, the Orders were to be then pronounc'd; but I can't remember the Registers set Pen to Paper.

Serj. Prob. What pass'd?

Lightb. The Masters insisted, they had a Right by Custom, to have the Money upon any Reference to them. Some Debate arose about the Master of the Rolls's Judicature, started first by himself.

Earl of Maccl. Whether I did not require them to lay Precedents before me?

Lightb. Your Lordship did; but a Year and more before that Meeting. I remember, my Lord call'd upon the Usher for his Precedents,
and

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and wonder'd he had not brought them, if he had any. I apprehend the Usher did not make out any Sort of Claim to keep the Money of the Court: And I am sure he produced no Precedents. Something did appear that my Lord had seen his Precedents, and did expect he should have brought more.

Earl of *Maccl.* Whether the Registers were not ask'd about the Practice?

Lightb. They were; and answer'd, that the Money had been usually order'd to the Masters.

Earl of *Maccl.* Whether it was not after this, that the Master of the Rolls began to speak of the Judicature; and how it was introduc'd?

Lightb. I have forgot how it was introduced: But he said, he would have the Masters consider, how proper it was for them to insist upon a Judicature, to order Money into their own Hands. I saw my Lord had not a Mind that Topick should be touch'd upon. The Master of the Rolls insist-ed on his own Judicature, and both introduc'd and stuck to it.

Earl of *Maccl.* When you applied to me, with Respect to the Disputes with the Master of the Rolls, was it not upon that you found me irresolute?

Lightb. Your Lordship always said, it was proper to settle all at once, that some Security should be given by the Masters; and upon that Score my old Proposal was reviv'd.

Mr. *Holford*
examin'd.

Mr. *Holford* call'd.

Serj. *Peng.* Whether, and when, he heard of a Proposal made by Mr. *Lightboun*?

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Holf. Two or three Years ago, Mr. *Lightboun* and I had a deal of Discourse about the Condition of the Chancery, the Accident happen'd to Mr. *Dormer*, and what was proper to remedy it. A great many Things were the same that are mention'd in the Letter that hath been read. I told him, it was right, especially as to the Matter of the Securities. I thought it proper to be taken in two or three Names.

Serj. Peng. Whether these Proposals were agreeable to him, so that, if they had been directed by the Chancellor, he would have submitted to them?

Holf. Yes, readily.

Serj. Peng. Whether he remembers any Discourse of these Proposals before my Lord?

Holf. I do not.

Earl of Maccl. Was you at the meeting Mr. Lightboun hath mention'd, and what pass'd?

Holf. I think it was on *Midsummer* Day [and gives the like Account in Substance as Mr. Lightboun had given before.]

Mr. Kynaston call'd.

Mr. Kynaston call'd.

Serj. Peng. Whether he knows of any Proposal made to the Earl of *Macclesfield*, about securing the Effects of the Suitors?

Kynast. I do. I think, the Masters all agreed, to go to him, and propose to give Security, so that it should not be in the Masters Power to dispose of the Securities. All or most of them went, and propos'd it.

Serj. Peng. In what Manner was it propos'd, that the Securities should be taken?

Kynast. That they should be put in one or two of the Masters Names, and of the Persons concern'd. I'm not certain.

Serj. Prob. When was this?

Kynast. I believe, about *Christmas* was Twelve-month.

Serj. Peng. In the next Place, we shall lay before your Lordships, an Order made by his Lordship, 17 *December* 1724. Tho', as to the several Proposals, he doubted of his Power to make any Order; yet when it was too late, then he doth make an Order that looks with some Care; but with this Introduction, that it was *not usual* for the Masters to give Security, tho' they offer'd it, and were willing to do it.

Mr. Paxton proves the Order, and the Clerk reads it.

Order 17 Dec^r 1724, read.

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Ordo Curiae, Jovis 17 Dec. 1724. [for securing the Suitors Money and Effects in the Bank.]

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Lord Morpeth
open'd the
nineteenth
Article.

Then the Lord Morpeth open'd the Nineteenth Article, in Substance, as followeth.

The Article charges, that *His Majesty* in November last, having directed an Inquiry into the Masters Accounts for the Security of the Suitors, the Earl advis'd them to assist each other, and make a bold Stand, to prevent Inquiry; and persuaded several of them to make a false Representation of their Circumstances to His Majesty.

The Facts charg'd contain the vilest Deceit and Treachery, aggravated by wicked Purposes; to mislead the Council-board, and prevent a Parliamentary Inquiry.

He says, it was a *Work of too great Consequence* for him singly to attempt; and besought his Majesty to depute some of his Privy Council to take it into Consideration.

Seven Years and more, had pass'd, since he was Chancellor, three since *Dormer's* Deficiency, without one honest Thought, or one sincere Step taken by him, for the Honour of the Court, or Safety of the Suitors. If the Examination sprang from his Request, his Intention will be known from his Conduct. His past Behaviour has been a Series of Extortion and Oppression, attended with Artifices to keep it secret: The King's Goodness was notoriously abus'd by him who was intrusted to dispense it; and that Fountain of Justice polluted, which he now dares to name in his Defence.

He has indeed acknowledg'd one Truth, that this *Reformation* was a *Work too great* for him singly to attempt.

The many Prostitutions of the Dignity of that great Office, had wounded the Authority of the Court it self: And he had bound himself so fast to those Masters he had admitted, by the Bands of Corruption, that nothing could be expected from his Hands.

The

The next is a Mixture of Flattery of the Committee, and false Praises of himself, for the Services he contributed to that Inquiry. After which he declares, *he is surprized to find himself charg'd with obstructing those Accounts.*

This is a poor Evasion. The Charge is not for obstructing the Taking the Accounts, but for procuring false Accounts and Representations, to frustrate the Inquiry.

But he proceeds to a most astonishing Declaration, that he *never thought of preventing an Inquiry, otherwise than by making it unnecessary, by rectifying whatever he found amiss.* By this he confesses, he did *think of preventing the In-*

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quiry. He has not dar'd to deny the Facts charg'd, because he knew they would be prov'd.

He declares that *Mr. Holford having subscribed his Accounts with a Declaration of his Abilities, he advised all the Masters to write the same.*

He says he *was induced to do this, from their assuring him they were able.* It seems, he took their Words for it. And some of them added the same Words to their Accounts, which he carried to the Council without looking into them; but all of them did not make these Subscriptions.

To the other Charge, he says, *an Order being made upon the Masters to produce their Securities and Cash; and the Masters complaining of the short Time, he confesses, he might say, some of their Brethren might be able to let them have Money.*

This Excuse is unjustifiable. 'Tis plain, the Masters disclosed to him one of the Practices, which 'twas his Duty to have reform'd.

His Answer betrays such a Confusion of Mind, as nothing but Guilt could have produced.

The Masters themselves will prove the Earl's Directions.

We shall also prove, that his false Advice was follow'd by several of them: And that afterwards when the Effects were to be carried into the Bank,

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several of them who had appear'd able, prov'd deficient in great Sums.

I own myself unable to aggravate this Offence as it deserves. The amazing Scene now open'd can't be accounted for, but as the Offspring of a Mind thoroughly debased, and flowing from the most incurable Corruption. As his Thirst for Lucre grew stronger, his Invention improv'd for securing his Advantages by preserving the Secret.

'Tis a remarkable Law of the *Grecians*, That *no Man, bred up to Merchandize should be admitted into any Office of Judicature, till he had quitted that Employment at least ten Years*; and the Reason was, because the Fingers of *Merchants* had been too much us'd to *traffick*.

The Earl's Administration has been one continued pyratrical Trade. He has prey'd alike upon Masters and Suitors. His Appetite was not check'd by the Approach of Death itself; and the Hand of a *dying Chancellor* was open'd to receive that unjust Gain he had so plentifully fed upon in full Health.

The Fund out of which he has rais'd his unwarrantable Profits ought to have been sacred: His Extortions therefore must have been Pillage from the Publick Treasure; The Livelihood of the Widow and Fatherless, under the Protection of the Law, in a Court of Justice, great Part of it dedicated to Charity: And how far it may be consider'd as sacrilegious Plunder, is left to your Lordships Judgment.

But the Methods to cover his Crimes are yet more heinous. He was sworn to *do Right to Poor and Rich, &c.* 'Tis surprizing to find him to have utterly abandon'd all Regard to this solemn Obligation. The Oath he caused to be administer'd to the Masters, immediately after he had shared with them the Suitors Estates, was, *neither to do Hurt to the King, nor Fraud, to the Hurt of any of the People.* But how have they been tamper'd with by him, to conceal the Grievances of the Subjects which he had procured?

Some-

Sometimes they were threatned, at other Times cajoled, but always deceived ; and this Artifice was his last Shift. When he saw the Storm began to rise, he deliberately contrived to turn his Master's Goodness to the Destruction of his People, and render the Throne it self the Shelter of his Iniquity, and Accessary to his Oppression ; but 'twas to skreen himself from the Justice of Parliament.

His Offences are ripen'd to a Fulness surpassing all Belief ; too big for the ordinary Hand of Justice. But the Commons, I presume, have by this Time convinced him ; and his Example will, I hope, convince the World, that no Offender, how great or subtil soever, can escape their Justice.

The Lord Bacon, one of his Predecessors, made a frank Submission to your Ancestors, upon the Accusation of the Commons ; and says, that *hereafter the Greatness of a Judge or Magistrate shall be no Sanctuary or Protection to him against Guilt ; and that, after his Example, Judges would fly from any Thing in the Likeness of Corruption, though at a great Distance ; which tends to the Purging the Courts of Justice, and reducing them to their true Honour and Splendor.* He indeed urged, that Bribery and Corruption were the Vices of the Times : But this Earl has no Ground to claim the same Excuse.

The Admonitions left by that penitent Great Man, and his Punishment, have conduced to prevent the like, near a hundred Years : For he recommended it as a Rule to all great Officers, to

Remember a Parliament will come.

And we promise our selves, whenever the Crimes of this Earl shall hereafter be mentioned, it will be remember'd that he receiv'd a Condemnation suitable to his Guilt. Page 120.

Then Mr. Snell (after a short Apology for his *Indisposition*) proceeded, in Substance, thus. Mr. Snell enforces it.

The Accusation hitherto has generally run upon *Corruption in the Sale of Offices, Extortion, and a Series of foul Practices* to conceal the Deficiency, which

which had drawn upon him an universal Cry for Redress. These Clamours had arisen from a Supposition of the Masters Insolvency; and no Method so likely to appease them, as to make the Masters *seem solvent*. But this last Effort was as unsuccessful as the former. For if they were sufficient, what Reason for his Apprehensions of a Parliamentary Inquiry.

This Apprehension only produced a vile Contrivance to guard himself against Punishment? which calls aloud for Indignation as well as Justice.

But the Fact charg'd implies a bold and desperate Attempt to mislead his Majesty, and to obstruct the Methods for securing the Suitors Effects; which is an Instance of his Ingratitude to his Sovereign, and Barbarity to his Fellow-Subjects.

If this Contrivance had passed, all the Obloquy would have been thrown upon his sacred Person, as if he had been engaged in a Confederacy to *skreen* that Guilt which he was labouring to detect.

The Earl's Answer on this Article is either vain, evasive or false.

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He arrogates to himself the Merit of that Enquiry, which his Majesty had directed: But the Part he acted in it might have restrain'd him from boasting of his Conduct.

There is no Credit to be given to what he urges, that *all the Masters, except Mr. Kynaston, declared they had Effects to answer their Accounts*, unless you'll suppose them perjured: For they are positive, *he never asked them, nor did they tell him so, because it would have been false if they had*.

Besides, they were directed by *Cottingham* and *Dixon*, to assist one another, in making a *Shew of their Abilities*: And some of them complied with this Direction; which we must ascribe to the Earl himself.

It is a Peer! A Lord Chancellor! who is guilty of these Crimes! And how precarious must be
the

the Property, how deplorable the Condition of the Subjects, if such Crimes should not be punished, in so exemplary a Manner, as to carry down Terror to all succeeding Chancellors?

If I have expressed too much Acrimony; if what I have said has offended the impeached Lord, I meant it only in Detestation of his Crimes, and not in Disrespect to his Person. For, I assure him, I should have been sorry for the Misfortune he has brought upon himself, if it had not proceeded from an insatiable Appetite after illegal Gains, which he miscalls *Voluntary Presents*, and for which I entertain the utmost Abhorrence. I will therefore conclude, *That a Gift blindeth the Wise, and perverteth the Words of the Righteous.*

Serj. Peng. We beg that Mr. Thomas Bennet may give an Account, what Direction the Masters receiv'd from his Lordship, in the Execution of the Inquiry.

Benn. Nov. 3. last, we received his Lordship's Order to make up our Accounts. The Masters met, and many, if not all, agreed, that the Making up the Accounts in the Manner he had directed, was impracticable in so short a Time. It was represented to Mr. Cottingham; and, I believe, by him to my Lord. Soon after, I was told, the Order was dispensed with by my Lord; and all we were to do, was to make up an Account of the Balance of the Money and Securities in distinct Columns: Which Order all the Masters complied with. On the 10th we had express Orders to appear at my Lord's with our Accounts ready; and all, except Mr. Conway, were there.

Mr. T. Bennet
examin'd.

Serj. Peng. If there was any other Meeting before that of the 10th of November?

Benn. There were some Meetings at Mr. Edward's, by Mr. Cottingham's Direction: And at one of them Mr. Cottingham brought Mr. Dixon (as he said) by my Lord's Direction, because he himself was deaf. He asked, if we would be willing, our Books and Securities should be inspected. The Masters answer'd, they were ready and willing. Then he asked, if we could produce the

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Balance of our Cash, and shew that we had the Money. All the Masters were under Surprize, and desir'd to know, whether the Money was to be taken from us? Says Mr. *Cottingham*, You are only to produce the Balance of Cash, and shew it: Goldsmiths Notes will serve, but Bank-Notes better. Mr. *Lightboun* said, Suppose the Notes, when produced, should be detain'd from us, most of the Goldsmiths Shops about *Temple-Bar* would be shut up, and thousands of Families ruined. Mr. *Cottingham* propos'd our assisting one another. Mr. *Kynaston* said, I find, we are to be given up; and I will neither borrow nor lend: He that borrows is a Knave, and he that lends is a Fool. The Masters were in great Concern. *Cottingham* and *Dixon* went back to my Lord; and returning told us my Lord was busy, and dismissed us. When we came to my Lord's, Nov. 10, all the Masters present, who had their Accounts ready, deliver'd them to him, according to their Seniority. Mr. *Holford* had added a Subscription to his Accounts, which my Lord read, and said, he lik'd it well. Some of the Rest he objected to. My Brother, and Mr. *Conway* had not theirs ready. I had written at the Bottom of mine, that I was *willing the Bonds and Securities in my Hands might be inspected*. My Lord wish'd we would all make Use of Mr. *Holford's* Subscription: For (says he) it would be for your Honour and Service to make your selves *appear able and sufficient* to answer the Effects in your Hands. Somebody asking the Meaning of this Commission, he said, This, I apprehend, will prevent a Parliamentary Inquiry.

Serj. *Peng*. Whether my Lord had made any Inquiry of the Masters, whether they were *able and sufficient*?

Benn. I can only answer for myself. He did not ask me; but only directed me to write that Subscription that Mr. *Holford* had done. I did go down and write it in Effect, that I *had all the Securities standing in my Name in the Account, as also the Tallies, Orders and Bonds in my Custody*:

Stody: And that I was able to answer the Money to every Person entitled. The Words [to a Demonstration] which are in Mr. Holford's Subscription, I omitted, because I could not make it out.

Serj. Peng. We shall produce these Accounts, and Subscription.

Mr. Onsl. Was there nothing mentioned relating to a Stand?

Benn. Mr. Cottingham said something of that at Mr. Edwards's.

Serj. Peng. We beg that Mr. Holford's Subscription may be read. [Which was read, as also those of Mr. Thomas Bennet].

The Subscriptions prov'd and read.

Serj. Peng. These are the original Accounts, laid before the Council.

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Serj. Prob. When this Proposal was offered to him, to subscribe as Mr. Holford had done? And whether he made any Excuse, that he was not able to do it?

Benn. No, I did as the rest.

Mr. Comm. Serj. When was it?

Benn. I think the 11th or 12th of November.

Mr. Kynaston call'd.

Mr. Kynaston examin'd.

Serj. Peng. Whether he was present at the Meeting, Nov. 10, and what pass'd?

Kynast. I was. [And gives an Account of it, in Substance, the same with Mr. Bennet's].

Mr. Plumm. Whether it was generally understood among the Masters, that giving of Bank-Notes and Goldsmiths Notes was to be understood Borrowing?

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Kynast. I understood it so. And Mr. Lightboun and Mr. Holford and others did so, by what they said.

Serj. Prob. Whether he made any Objection to the Proposals of subscribing?

Kynast. No.

Mr. Lightboun call'd.

And Mr. Lightboun.

Serj. Peng. What pass'd at that Meeting at Mr. Edwards's?

Lightb. gives the same Account, in Substance, as the other Masters.

Mr.

Mr. *Lutw.* What Application was made to any of the Masters to carry in their Accounts ?

Lightb. My Lord sent for me one Morning, and desir'd me to be thereabouts when the Accounts were brought into the Council, that if there was any Occasion to explain any Thing, I might be ready. I told his Lordship, I would give no Satisfaction about any one's Accounts but my own: But if he pleased I would be thereabouts, and another Master with me. I acquainted Mr. *Holford*, who said he was ready to go with me.

Mr. *Lutw.* What did he desire you to attend for ?

Lightb. To resolve any Difficulty before the Council. After this, *Cottingham* told Mr. *Holford* at Mr. *Edwards's*, that my Lord desired two of the Masters to attend the Council with the Accounts of the Whole ; and that Mr. *Holford*, the senior Master, should be one, and chuse another to go along with him. Mr. *Holford* desir'd me to go with him. I told him, I did not care to carry in any other Accounts than my own ; and Nobody else should carry mine. Mr. *Holford* said, nor he neither. I said, the Accounts were called for by my Lord, and not by the Council ; and therefore I thought it proper to deliver them to him.

Mr. *Lutw.* What passed Nov. 10, when the Accounts were deliver'd to my Lord ?

Lightb. My Account was not ready, because I did not care it should be carry'd in by any Body but myself. However I went, and told my Lord, that mine were not ready, but I would finish them by Eight o'Clock, which I did.

Serj. *Peng.* We desire Mr. *John Bennet* may be call'd.

Mr. *John Bennet* examin'd.

Mr. *John Bennet* call'd.

Mr. *Lutw.* Whether he was at the Meeting at Mr. *Edwards's* House, and what passed ?

Benn. I was. [and gives the same Account, in Substance, as the other Masters did].

Mr.

Mr. *Lutw.* Whether any Thing was said of assisting one another? Page 125.

Benn. Mr. *Cottingham* pressed us much to help and assist one another, with Cash, as far as we are able.

Mr. *Plumm.* If in Pursuance of that Advice, he did assist, or was assisted, by any of the Masters?

Benn. One of them assisted me with Cash, which is locked up in the Chest. I gave him Security for it. And Mr. *Conway* inform'd me, he had a real Security for 9000 *l.* and beg'd me to assist him with 5000 *l.* I told him I had mention'd my Cash, and could not assist him. He asked, If I had any Bonds by me? I told him, I had 2000 *l.* Bonds: And upon lodging Writings with me, which he told me was a real Security for 9000 *l.* I did lend him them, and he brought 'em again in two Days.

Mr. *Plumm.* What induced him to lend the Bonds?

Benn. The real Inducement was the real Security given me: But it had been recommended by Mr. *Cottingham* too.

Mr. *Plumm.* Whether he opened the Bag, to see the Security, or took it by Content?

Benn. I did not open it.

Mr. *Lutw.* Whether those Bonds belong'd to the Suitors?

Benn. They were brought in after my Account was deliver'd in; and I must give 'em in my Post-Account: Therefore I said, I must have them again in two Days.

Serj. *Peng.* What Subscriptions he made to his Accounts?

Benn. I came to my Lord's after the Gentlemen had deliver'd in their Accounts, and were writing their Subscriptions. They told me what my Lord had recommended to them to write: And I varied mine thus; That *I had all the Securities in my Name, as specified on the other Side, and all the Bonds and Orders were in my Custody; and that*

Mr. Lovibond
examin'd.

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that I was ready to satisfy his Lordship, that I was able to answer the Money to the Parties.

Mr. Lovibond call'd.

Mr. Lutw. Whether he was present at the Meeting at Mr. Edwards's?

Lovib. I was. [and agrees with the rest].

Serj. Peng. Whether he did not lend some of the Masters some Money?

Lovib. I lent 10200*l.* and odd, to Mr. Bennet.

Serj. Peng. Whether he was present, upon the Delivering in the Accounts, Nov. 10?

Lovib. Yes.

Serj. Peng. Look upon that Subscription, and read it.

Lovib. [reads the Subscription] "All which before-mention'd Particulars I am ready to answer on Demand, or to give Security so to do, whenever required. H. Lovibond."

Serj. Peng. Whether my Lord made any Objection to it, and what?

Lovib. He objected to the latter Part of it, because that might imply, that my Effects were not ready.

Serj. Peng. Did you alter it afterwards, and in what Manner?

Lovib. My Lord mention'd Mr. Holford's Form, and that I had best alter it to that; which I did accordingly.

Mr. Lutw. Read this Subscription.

Clerk reads, viz.

"All these Securities standing in my Name, as in this Account is specified, I am ready to procure Certificates from the proper Offices, that I have, and had them before this Account, if your Lordship requires it: And as to the Monies, I am ready to answer it upon Demand to every Person entitled thereto, and who can give me a legal Discharge.

Nov. 10, 1724. H. Lovibond."

Mr. Lutw. There is something particular in this Case. Mr. Lovibond had said the Truth, that he

he was able to produce, or give Security, &c. But it was to be alter'd, as if he had the actual Balance in his Hands.

Serj. Prob. Whether he was then able to produce the Balance?

Lovib. I could have done it the next Day, out of my own Estate?

Mr. Strange: Whether you took real Security for the 10000 l.

Lovib. Yes, in Land.

Mr. Plumm. If my Lord asked him any Questions about his Abilities?

Lovib. No.

Dr. Sayer: Whether he did not believe all the Masters able to make good their Accounts?

Lovib. I did believe so from their own Discourse. I had no Knowledge of their Affairs.

Mr. Edwards call'd.

And Mr. Edwards.

Serj. Peng. What passed at the Meeting at his House?

Edw. [*Gives the same Account of the Meetings and Subscriptions as before*].

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Mr. Conway called.

Mr. Sol. Gen. Whether he was at the Meeting?

And Mr. Conway.

Conw. I was. [*and gives the same Account, as the Rest*].

Serj. Peng. Whether he borrowed any Money?

Conw. Mr. Godfrey lent me 9000 l. and Mr. Bennet 2000 l.

Mr. Lutw. Whether the Securities were turn'd into Money, or Notes?

Conw. Into Notes.

Mr. Lutw. Whether they were locked up, or he took them back?

Conw. I took them back.

Mr. Lutw. What became of them afterwards?

Conw. Some I paid off; others I return'd to Mr. Rogers the Goldsmith, who had advanced me the Notes on those Bonds.

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Mr. Plumm. When?

Conw. In a few Days after.

Mr. Lutw. How he persuaded the Goldsmith to let him have those Notes?

Conw.

Conw. I gave him the Bonds which I had from Mr. Godfrey and Mr. Bennet, in the Nature of a Pledge for the Notes.

Mr. Lutw. What became of the Bonds?

Conw. I return'd them to Mr. Godfrey and Mr. Bennet.

Serj. Peng. When he carried back the Notes to the Goldsmith, whether he took up the Bonds?

Conw. I did.

Serj. Peng. Whether he supplied Mr. Godfrey with 5000 *l.* in *India* Bonds before, or after he produced his Cash to the Committee?

Conw. After.

Serj. Peng. Before Godfrey had done it, or after?

Conw. After he had produced his Securities, and before he had produced his Cash.

Serj. Prob. Whether he was able to pay the Balance of his Account?

Conw. I was, in Effects: And I said no otherwise.

Mr. Sandys: If my Lord asked him as to his Ability?

Conw. No.

Serj. Peng. What Deficiency there remains upon his Office?

Conw. 13000 *l.* of which I can take off something in my Post-Account.

Serj. Prob. Whether he is now able to make good the Deficiency?

Conw. Yes, I am.

Serj. Prob. Whether he hath made any Conveyance of any Estate as a Security for it?

Conw. I have.

Serj. Peng. Whether any Thing hath been rais'd out of that Estate?

Conw. It is but a few Days ago, that it hath been made.

Lord Lechm. Whether he stands indebted to any other Persons, but to the Suitors?

Conw. No.

Mr. Lutw. How, and by what Estate the Deficiency is to be made good?

Conw. By an Estate in Land.

Mr. Lutw. Whether that Estate is settled on his Marriage? Or by Will?

Conw. It was never settled on my Marriage: I was Tenant in Tail by my Father's Will; and my Wife and Son joined with me in levying a Fine.

Mr. Onsl. What Interest had your Son in it?

Conw. None.

Mr. Onsl. What Annuities charged on it?

Conw. None.

Mr. Onsl. No Payment to the Mother?

Conw. There is, out of another Estate.

Mr. Onsl. What are the Rents of the Estate you have secured for this Money.

Conw. between 5 and 600 *l.* per Ann. I can't say it is all let so; there are some Demesnes.

Lord Lechm. How that Deficiency of 13000 *l.* came; and what is become of it?

Conw. My Office cost me, to my Predecessor 6000 *l.* besides 1500 *l.* upon my Admission, and 500 *l.* Contribution.

Mr. Onsl. How was the Rest contracted?

Conw. I borrow'd 1500 or 2000 *l.* to satisfy my Brother's Account to the Crown, and repaid it out of the Cash of the Office: The Remainder I have lent to my Friends and Acquaintance.

Mr. Onsl. Name any one.

Conw. I lent 2600 *l.* to a Noble Lord, who is now dead.

Serj. Prob. Whether the Managers ought not to be confined to the particular Article they are now upon?

Mr. Onsl. We are now upon the Article of Deficiencies. They have asked, whether he can make it up: Therefore 'tis proper to know where the Money is. Page 129.

Serj. Prob. Mr. Conway hath given Land Security to make it up; and therefore 'tis not material how the Deficiency happen'd.

Mr. Lutw. 'Tis proper for us to ask the particular Circumstances, to find out whether he is able to make good his Deficiency. Whether he hath assign'd over all his Debts?

Conw.

PROCEEDINGS against the

Cownd. All my real Estate.

Mr. Lutw. Whether he hath assigned this 2600 l.

Cownd. That is applied among my Causes.

Mr. Onsl. Who this 2600 l. was lent to?

Conrw. To my Lord *Bulkley*; and it is since applied in a Cause, with the Approbation of the Parties.

Mr. Onsl. Hath it been repaid?

Cownd. No, it now remains as Security.

A Lawyer not
to discover his
Client's Secrets.

Earl of Abing. If any Question is asked him, which may subject him to any Penalty, or concern his Client, he is at his Discretion, whether he will answer it.

No Man ob-
liged to answer
any Thing that
may criminally
affect himself.

Lord Lechm. A Person is not obliged to answer any Thing that may criminally affect him. But, where the Enquiry is after a Debt, in Order to explain his Oath, as to his Sufficiency, which is the Matter of Debate, it is material, and ought to be answer'd. I desire to be inform'd, whether the 2600 l. was repaid, and when?

Conrw. It is not repaid. It is applied, as a Security, in a Cause, five or six Months ago, by the Approbation of the Parties.

Earl of Maccl. I apprehend, this is the Article in his Post-Account, which he said he could discharge.

Lord Lechm. Who are the Persons to whom this is applied, that it may be known, whether it is in the Post-Account?

Mr. Onsl. First, What Security did my Lord *Bulkeley* give?

Conrw. A Bond and Judgment: And it is applied in the Cause of *Faulconberg* vers. *Faulconberg*.

Mr. Onsl. Do you reckon this Part of the 13000 l. now deficient.

Conrw. No.

Mr. Onsl. How the Remainder of his deficient Money was applied, or how the Debt happen'd?

Conrw. 2100 l. and odd I have laid out in Land, which I have since conveyed; and the Rest I have in Bonds and Notes.

Mr. *Lutw.* Whether those have not been paid into Court, to make up his Deficiency?

Conw. No, I hope to have it allowed on my Post-Account, being applied, in the foresaid Cause, with Approbation of the Parties.

Mr. *Onsl.* We leave him to your Lordship's Observation.

Mr. *Thompson* call'd.

Serj. *Peng.* How much the Deficiency of the several Masters amounted to?

Thomps. I have collected the Deficiencies of the several Masters, from the Report made to the Committee of Council, viz.

Mr. *Thompson* proves the several Deficiencies.

	<i>l.</i>	<i>s.</i>	<i>d.</i>	
Mr. <i>J. Bennet's</i> - - - - -	17541	15	10	
Mr. <i>Conway's</i> in Cash - - -	10039	4	4 $\frac{1}{2}$	Page 130.
— In Stock - - - - -	3550	0	0	
Mr. <i>Kynaston's</i> - - - - -	26908	11	3 $\frac{1}{4}$	
Mr. <i>T. Bennet's</i> - - - - -	9075	0	0	
The Total of the present Masters	67114	11	5 $\frac{3}{4}$	
The Total upon Mr. <i>Borret</i> 56050	10	1 $\frac{1}{2}$		
Estimate of his Effects 44000	0	0		
Deficiency remains - - - -	12050	10	1 $\frac{1}{2}$	
The Total upon Mr. <i>Dormer</i> 49604	11	11		
Paid by Mr. <i>Edwards</i> 23725	15	9 $\frac{1}{2}$		
Deficiency remains - - - -	25878	16	1 $\frac{1}{2}$	
The whole Deficiency - - - -	105043	17	8 $\frac{3}{4}$	

And if any Securities or Money of the Suitors are omitted in the Masters Accounts, they are not included in this Estimate.

Earl of *Maccl.* Have you had the Administration either of *Borret* or *Dormer* before you?

Thomps. No.

Serj. *Peng.* We shall give Account of another Deficiency of 2000 *l.* upon Mr. *Conway*, which is not charged in his Account.

Mr. *Sanderson* sworn.

Mr. *Lutw.* What, and how much?

Mr. *Sanderson* examin'd.

Sanders. I was Solicitor between Sir *Erasmus Norris* and *Alex. Norris*. After the Accounts were brought into the Registers Office, I look'd if Mr.

Conway had charged himself with a Sum paid in that Cause. I found it not charged. I had drawn up the Account, and given him a Copy of it ; which he did not deny, but said, there was not so much by 1 or 200 *l.* Said I, There is no Entry of the Cause, nor Mention of any Sum. He said, he believed it was so much, and therefore he did not mention it. I asked him, Why he did not insert how much he thought it was? He said, because he would pay in all.

Serj. Prob. How much the whole Money in that Cause was?

Sanders : 2274 *l.* 8 *s.* 11 *d.* besides Interest from Lady-day was Twelvemonth.

Mr. Sol. Gen. Notwithstanding the Masters represented themselves *able to pay the Whole*, we apprehend the Security given will not be sufficient for half.

Earl of Maccl. I desire to ask *Mr. Thompson*, Whether the Charge upon *Borret's* Office be taken from the Office, or only from *Mr. Meller*?

Thomps. From the Vouchers, which *Mr. Meller* produced.

Earl of Maccl. Are there any Payments allow'd, made by *Borret* in his Life-time?

Thomps. A great many.

Earl of Maccl. Have you any Account what *Mr. Borret* paid out himself?

Thomps. The Account we had of this was from one *Mr. Parker* who was Clerk to him. He produced several Receipts ; and the Masters allowed them.

Earl of Maccl. Who gave you Account of the Effects belonging to *Mr. Borret*?

Thomps. *Mr. Bennet* and *Mr. Godfrey*.

Earl of Maccl. Did you know who is Administrator to *Borret*?

Thomps. I have heard *Mr. Paxton* is.

Paxton : Yes, I administer'd to *Mr. Borret* about the Middle of *April* last.

Lord *Lechm.* Whether Mr. *Thompson's* Computation of the Deficiencies are taken from the voluntary Accounts of the Masters, or were any of the Suitors Parties to the Computation?

Thomps. From the Masters only.

Serj. *Peng.* Whether Mr. *Godfrey* and Mr. *Bennet* were not the Masters imploy'd under the Earl of *Macclesfield*?

Thomps. They appear'd to us to have the Custody of *Borret's* Effects.

Lord *Lechm.* Whether the several Deficiencies of the Cash-Balance arose upon the whole Balance, or is appropriated to any particular Suitors?

Thomps. No Part of the Cash-Balance is appropriated to any particular Suitor.

[Then Mr. *West* concluded the Evidence in a long Speech; in Substance, as follows.]

Mr. *West*: I shall not waste Time, by enumerating the Articles of the Charge, and repeating the Evidence: But shall reduce this long Examination to some general Heads.

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Mr. *West* sums up the Evidence.

A wicked and corrupt Design to procure to himself exorbitant Gain, was the fatal Principle from which all this Mischief sprung. This prompted the Earl of *Macclesfield* to extort those large Sums from the Masters he admitted: This engag'd him to overlook that Care he ow'd to the Suitors, and to admit Persons of small Abilities, and every Way unqualified: This oblig'd him to connive at, and permit the fraudulent Practice of Paying the excessive Price of their Places out of the Suitors Money: This forc'd him to suffer, or rather to encourage the purchasing Masters to traffick and game with the Suitors Estates. There was no other Way, by which these liberal Purchasers could re-imburse themselves. And this Circumstance, even after the Suitors were likely to lose a great Part of their Effects, reduc'd him to the Necessity of refusing the necessary Measures to prevent that Practice for the Future: And when the fatal Effects of this Liberty began to appear, he was compell'd to become a Confederate with the deficient Masters, to prevent its being known.

Hence sprung the unequal Composition with *Wilson*; the Partial Orders for Payment; the private Contribution; and his own Liberality to *Lockman*! But when all these Methods prov'd ineffectual, and the Cries of the Widows and Orphans had reach'd his Majesty, then did the Lord High Chancellor of *Great Britain* combine with these Masters, and persuade them to make false Representations to deceive his Majesty, to frustrate his gracious Intention, and prevent Inquiry.

These are the Consequences of that Corruption, and perfectly consistent with the whole Tenor of his Actions as Chancellor.

The Commons began with his *Oath*; which I should not have reminded you of, if he had not unaccountably attempted to quibble away the Sanctity of it, as a meer Ceremony, because it was read to him in *French* when he kiss'd the *Bible*. They afterwards gave Evidence of Profits, which he did not admit in his Answer.

The first General Head is, That he *corruptly, illegally and extorsively insisted upon and receiv'd great Sums for the Admission of several Persons into Offices relating to the Administration and Execution of Justice.*

The Commons began with the 9th Article, which relates to his Taking 100 Guineas from *Tho. Bennet*. The Fact discovers the Man! His Lordship offers to produce a Catalogue of his Generosities. Instead of being *generous*, I will suppose him profuse: Yet, 'tis not a new Character, that even Squanderers should be rapacious.

To prove this Article, *Bennet's* Resignation and *Hamersley's* Grant were prov'd. *Cottingham* owns the 100 Guineas for permitting *Bennet* to surrender: But *Bennet's* Evidence makes it manifest, that they were in a Manner extorted. 'Tis not so wonderful, that *Cottingham* should not speak Truth (in relation to Mr. *Hamersley*); especially being a Man, who, upon these Occasions, would not have *known* his Father, without the Mediation of Gold. *Bennet* was surpriz'd (as well he might) that he did not know his next Door Neigh-

Neighbour. However, *Cottingham* at last explain'd the Mystery, that a Present was *expected* by the Earl, and that he *insisted* upon a Present.

[*Mr. West was here interrupted by the Earl, who said Cottingham's Words were not that he insisted upon, but that he expected a Present. Upon which Mr. Onslow represented warmly, that the Earl's Behaviour was irregular, in breaking in upon the Managers. And then Mr. West went on.*]

It is my Duty to represent his Actions in the strongest Light; and the strongest Light is the justest Light. Upon Recollection, I do not think the Word I us'd, of Force equal to the Fact. The *Expectations* of a Chancellor, communicated by a Secretary, to a new-made Master, is more than to *insist*. But, after representing the Hardships, and finding both the Earl and his Secretary inexorable, *Bennet* agreed to pay the 105 *l.* being assur'd by *Cottingham*, that he need take no farther Trouble, for the Chancellor would take Care of the Rest.

Mean this would have been in any Man: But for a Peer, a Lord Chancellor, so *oblig'd and so dearly bought*, to become a Broker for 100 Guineas, is astonishing! But for one of the Lords-Justices to do this, is not to be express'd in its proper Colours.

The Evidence on this Point comes up to the express Words of the Statute, and proves, that he sold this Place for *Gift and Brokage*.

The next Instance, was the *illegal Sale of several of the Offices of Masters*; which manifestly relate to the *Administration and Execution of Justice*.

My Lord, in his Answer, industriously is silent as to the particular Sums receiv'd, though the individual Sums charg'd have been prov'd by the Persons themselves. If it was a *known Perquisite*, (as he insists) the Sum would have been also *known*. His Predecessors possibly may have accepted *small Gratuities* from new Masters, *after* their Admission: Therefore he may *sell* them for

the *most* he could get! The Argument, would have been as good, when it was usual to give New-Years Gifts to the Chancellor, to prove, that he might have sold his Favours, and suffer'd none to plead who would not pay the full Price!

He avers, the Masters did *voluntarily send him a Present, on Occasion of their Admittances*. This is not the only Instance of his deviating from Truth. But Contradiction, Equivocation and Untruth appear to be the predominant Qualities of the whole Answer. This is not only an Aggravation, but a Proof. For what Cause must it be that reduces a Man of his Abilities and Character, to use such contemptible Arts, as are unworthy the Great; unpractis'd by the Innocent; and (I hope) will prove useless to the Guilty!

Kynaston, Bennet, Elde and Thurston, all paid their Money *before* they were admitted. *Kynaston* proves a direct Bargain: And so does *Bennet*. *Elde* carried his 5000 Guineas in a Basket: But the *Basket* was no Part of the *Bargain*, and therefore the *Scrupulous Earl* return'd it back to him empty. And *Thurston* left Bills for 5000 Guineas with my Lady; which he found were his best Arguments. All which proves the Earl's artful Methods of Extortion, and also that *the Money*, instead of being *voluntarily given*, was *unjustly extorted*; and instead of a *Present or usual Perquisite*, was an *illegal and corrupt Bargain and Sale of Offices relating to the Administration and Execution of Justice*.

Consider once more his Answer. What Caution! What Equivocation! What Confusion of Mind! What Guilt! Bank-Bills taken out in feign'd Names; the Secrecy of the Payment; the Silence of the Price: One 5000 Guineas in a Basket; another left on a Toilet; and lastly his own Declaration to the Masters, *how much they, how much himself might be affected!* All flow'd from this Principle, that the Seller and Buyers were all conscious that the whole Transaction was illegal and corrupt.

His

His Lordship hopes the receiving Presents on such Occasions is *not Criminal in it self, nor by the Common Law*, or made so by any *Act of Parliament*. Is it possible, that Corruption in the Officer is not the necessary Consequence of being oblig'd to purchase his Place? This is *in Terminis*, the Reason of the Statute of *Edw. VI.* Is it possible, that Oppression must not be added to this Corruption? Or can he, who sells these Places, to satisfy his own Avarice, be a competent Check upon those Officers to whom he has sold? That is the Reason of the Judgment, † that *the Sale of Offices is Malum in se, and therefore fineable*. But when I add the Oath enacted by the Statute 12 *Richard II.* (his Lordship will add his own Opinion and Apprehensions) 'tis not possible to doubt, but that such Sale is *Criminal in itself, by the Common Law, and by Act of Parliament*.

The next Point is, the *admitting Persons to the Office of Masters, who were of mean Substance, and unqualified*. Their being deficient is a Presumption, and some Degree of Proof, that they were of small Substance at their Admission. How else is it to be conceiv'd, that Masters, in so short a Time, should be so much in arrear! *Kynaston* was admitted but in *August 1721*, and in *1724*, was deficient 26908*l.* *T. Bennet* admitted but in *June 1723*, and in little more than a Year was deficient 16075*l.* yet these Men were chosen to be trusted; one with near 50,000*l.* and the other with near 100,000*l.* and the Earl endeavour'd to prove one worth 1000*l.* or 1500*l.* who own'd himself worth nothing. These are the Men *Mr. Waller* swore, the Earl in open Court declared to be *Men of as great Fortune, Abilities and Skill, as had ever sat in that Court, and that he had great Satisfaction in having admitted most of the Masters himself!* *Godfrey, Conway, Kynaston and Bennet* swore, that the Page 135.
Paying the Fine of their Offices out of the Suitors

† *Moer 782, Stockwith and North.*

Money, induced them to be Purchasers; for they own they were not able to buy without it. It appears by Mr. *Bennet's* Evidence, that he not only knew of this Practice, but endeavoured to conceal it. Mr. *Bennet* concludes his Accounts delivered to the Privy Council, *Item, In the Hands of Persons of Ability and Honour* 9075 *l.* which he explained, That, as to 1575 *l.* he meant his Lordship, and as to the Residue Mr. *Hiccocks*, who had detain'd so much of the Suitors Money in his Hands, by Way of Payment for his Place. He swears, the Earl said, *That his Accounts were made up the worst Way in the World; for every Body would now judge, that what he paid for his Office came out of the Suitors Money, and that what had been so much suspected would be now discover'd, and what he himself had taken so much Pains to deny, whenever he was ask'd the Question.* After this the Chancellor bid him go to Mr. *Hiccocks*, to try what he would do. But he would do no more, than lend 2000 *l.* which *Bennet* refused, and insisted on its being given him, or not at all. He reported this to the Earl, who displeas'd at it, said *Hiccocks* should pay the 2000 *l.* and he would repay the 1575 *l.* but it should be in such Manner, as that *Bennet* should not know in what Manner it was done. But he found the Earl intended to trick him of this Money, therefore the Accounts were deliver'd in, and the Story comes out. The Answers given by this and almost every other Witness, to the Questions proposed by the Earl and his Counsel, and even his Lordship's own Questions, confirms our Accusation. He ask'd, *Did you at this Meeting, tell me, that if Hiccocks would pay 2000 l. you then would make up the Rest your self?* This shews *Bennet* was with the Earl upon this Occasion; and *Hiccocks* retaining the Suitors Money was Part of the Conversation. *Bennet's* Answer to this Question consists with what he said before, *That he did not say, if Mr. Hiccocks would pay 2000 l. that then he would stand the Rest, because he was not worth the Money.* The Earl being angry

gry at this Evidence, asks Mr. Bennet, *And how could you, as an honest Man, offer to buy a Place, when you were not worth the Purchase-Money?* I submit, whether it was not as honest for him to buy without Money, as for his Lordship to sell without Right. Hitherto *uncorrupted Avarice* has been the only Principle of this Earl.

In what follows, Fear begins to mingle in all his Actions; and for this Reason the Bankruptcy of *Dormer* was to be conceal'd. It has appear'd in Proof, that upon *Dormer's* Absconding, the Deficiency in his Office amounted to upwards of 52000*l.* for the Account upon the Table, which reduces the Balance to 49000*l.* was made up after the Masters had been obliged to contribute their 500*l.* each. Page 136.

The first Step the Earl took, was to direct Mr. *Rogers* and Mr. *Hiccocks* to carry on a private Negotiation with *Dormer*; assuring him in his Lordship's Name, that his Person should not be confin'd, provided he made an Assignment, and Discovery of his Effects; *Dormer* return'd and executed an Assignment, but was never examined upon Interrogatories, or any of his Creditors attended to enquire into the Truth of his Discovery. Mr. *Lightboun* acquainted your Lordships, that soon after *Dormer's* Failure, he told the Earl, he suspected the Account given in by *Dormer* was not just; and that he ought to be committed for Example sake; and at the same Time gave broad Hints of his suspecting the Abilities of other Masters, and represented the Fatality of the Year 1720, and that it might affect the Masters. The Earl was very early in this Resolution, some Way or other to patch up this Affair of *Dormer's*, to make it last his Time: For Mr. *Kynaston*, when he was in Treaty with Mr. *Cottingham* to be admitted Successor to *Borret*, objected this Deficiency of *Dormer's*, as a Reason why the Chancellor should not insist on so large a Sum. But he made light of it, and said it would soon be made up. Mr. *Edwards* also, who succeeded *Dormer*, says, he never would have bought it, had he not been

been assured the Deficiency would have been made good.

The next Step was the Composition: And the Commons have produced the original Instrument of Composition, by which it appears that the Sum of 24000 *l.* was to be discharged for the Sum of 1463 *l.* in Money, and an Assignment of 10000 *l.* or a proportional Part of what should be recover'd of a desperate Debt of 22600 *l.* due from one *Poulter* (a Bankrupt) to *Wilson*.

The Introduction to this Affair was thus: Mr. *Edwards*, to whom *Dormer* assigned his Effects, acquainted the Earl that *Wilson* proposed a Composition. To this he agreed, and advised him to Petition for that Purpose; accordingly he did; upon which the Earl referred the Matter to Mr. *Hiccocks*, who made his Report; which being annex'd to another Petition, the Composition was confirmed. During this whole Transaction *Wilson* was never examined upon Interrogatories: No Creditor summon'd to attend; the Character of *Poulter* perfectly unknown: No Knowledge of *Wilson*'s Affairs, but what he communicated himself; his first Proposal accepted; no Consultation with any other of *Wilson*'s Creditors; and, to shew how useful that might have been, it has been proved, *Wilson* has paid several of his Creditors their whole Debt.

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This was the Care the Earl took of the Suitors of the Court: And to prevent any of these Particulars coming to their Knowledge, not one of the Facts appear upon any Record or Register whatsoever! Your Lordships have a Certificate from the proper Officers of what I say.

The Earl very nicely examined *Edwards*, as to what he received by this Composition: And certainly it receives a wonderful Justification from his owning he received in *October* last 1000 *l.* The next he examined to, was his Lordship's Diligence in securing *Dormer*'s Effects. The Commons brought Evidence to shew, That some of *Dormer*'s Estate had been conceal'd.

My

My Lord *Macclesfield*, and those Masters on whom he vouchsafed to smile, seem to have considered themselves as in a separate Interest, against that of the Suitors. *His* View was to keep the Circumstances of the Court secret, and to prevent any Thing that might happen to lessen his Profits in the Sale of Places: *Theirs* to retain the Money of the Court in their Hands, and to hush any publick Clamour that might Occasion the Taking it away. This was the great Artifice his Lordship employ'd, to terrify them to contribute 500*l.* each, to supply the Deficiency in *Dormer's* Office: The Custody of the Money the Masters own'd made a very considerable Article in the Profits of their Places. Mr. *Holford* acknowledged, *That he understood it so; for he never proposed to lock the Money up; but to employ it for his own Use.* In Fact it was what the Masters bought, and what the Chancellor sold; or rather Widows, Orphans, Lunatics, the Wards and Suitors of the Court were the wretched unhappy Merchandize in which the Earl thought fit to deal. When *Kynaston* was to buy, he swears *Cottingham* or *Rogers*, or both recommended it to him as the best Office. *Cottingham* own'd he said to Mr. *Kynaston*, *You have purchased a very good Office; for there is a great Deal of Money in it.* But the Thing proves it self.

That there was in Fact a Contribution by the Masters of 500*l.* each, is evident from the Receipts upon the Table. Mr. *Holford* fully explains the Method taken to draw them into it. He receiv'd, soon after the Report of *Dormer's* Bankruptcy, an Order from *Cottingham* to bring in his Account to the Chancellor; soon after an Intimation of a Contribution of 500*l.* was necessary to supply the Deficiency; which he paid, and his Accounts were never called for.

Lightboun was another Master who received Orders to prepare his Accounts; but not paying his Money, *Cottingham* told him it was necessary to contribute 500*l.* and possibly the Money might be repaid. Still *Lightboun* was inflexible;

ible; and little Arts were used to make him uneasy in his Office. Then the Earl, in the Beginning of the Year 1722, told him, he was sorry to hear he did not pay; desired him to consider how dangerous it was not to take Care of *Dormer's* Affairs: Upon which *Lightboun* honestly represented to the Chancellor, how cautious he ought to be; since it was visible the Masters came into a Project of this Kind, only to keep up the Credit of the Court, till they found an Opportunity of Selling their Places at great Rates, and concluded with a peremptory Refusal to contribute.

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By the Orders that have been read, and Mr. *Edwards's* Evidence, it appears, that he made several Orders for the Payment of Money, without any Regard to that due Proportion the Suitors of the Court were entitled to. His Lordship, in his Answer says, It was not Incumbent upon him *Ex officio* to declare an Average. Mr. *Lightboun* and Mr. *Edwards* both represented to him the Hardship of one Creditor's Receiving his whole Demand, and another, who had equal Right, losing his whole Debt. The Reason of this was, that the Declaration of an Average would publish that Deficiency to the World which he had used so many Stratagems to conceal.

Mr. *Atwood* who was the Solicitor, in the Cause of *Harper and Chase*, in which the Deficiency of *Dormer* being mentioned, the Earl declared, *That indeed he had heard of the Deficiency, but nothing of it had ever come judicially before him; and that he knew nothing of it but as publick News.* This was after he had paid 1000*l.* towards it himself; and that his Diffimulation might be on Record, pronounced an Order, that is now on the Table, in which he directs the Master to enquire, whether there was *any* Deficiency in *Dormer's* Office, and if the Suitors were likely to lose any of their Money?

Your Lordships know the Contract that was made between the Chancellors and the Masters: I therefore shall not waste your Time in mentioning Evidence to prove, that they who gave such
vast

vast Prices for the Custody, did not neglect employing it for their own Use. My Lord *Macclesfield* knew, that the Masters gamed with the Suitors Money themselves, or for an extravagant Interest lent it to those who did: *He knew* this occasioned *Dormer's* Deficiency: *He knew* that other Masters had it still in their Power to do the same; and he took no Measures to prevent it; therefore he *encouraged* it.

The Earl neglected obliging these Masters to give Security, though Mr. *Lightboun* inform'd him, some of the Masters were so suspected; Mr. *Lightboun* went farther, and proposed a Scheme of Security, to prevent any Losses for the Future; which was put in Writing, and the Earl kept it by him two Years, without taking any Notice of it. Mr. *Kynaston* was proved deficient 26000 and One hundred Pounds; yet he proposed to give Land, or other Security, for the Effects with which he was entrusted. *What Answer must we give our Fellow-Subjects who are undone, I will not say by Kynaston's, and other Masters Deficiency, but by his Lordship's own wilful Neglect?* He owns he did not insist upon any Security from them; and in his Answer covers himself under the Practice of his Predecessors. Therefore, because they did not insist upon Security from Persons who wanted none, he might justly entrust those who were able to give none.

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I am now come to the last Head of our Charge, and you will now see the Earl abandon'd to all his Fears! And the Dread of a Parliamentary Inquiry sits heavy on his Mind.

The first Instance of this appears in Mrs. *Chitty's* Case; where an Order was made for the Payment of 1000 *l.* to her, Part of 11,000 *l.* of hers, paid into *Dormer's* Hands. She Assigns this Order to one *Lockman*, who diligently pursued the Chancellor, and represented the Circumstances he was in; and insisted upon his Money; which forced the Chancellor to promise him to get the Money paid. Upon this he summoned the Masters, in order to persuade them to contribute 50 *l.* each.

each. *Cottingham* told it *Mr. Lightboun*, and made a Demand of the old 500*l.* and asked him, what Answer he would send the Chancellor; he reply'd, he would deliver the Answer himself; in the mean while he worked up the Masters to a Resolution not to comply with this fresh Demand. Then they all went to his Lordship's House. His Lordship began the Conference, with asking *Mr. Lightboun*, in a very angry Tone and Manner, why he did not pay his 500*l.* who reply'd, he neither could nor would pay, and was confirm'd in his Resolution; he had often told his Lordship the Reason. The Earl then proposed the Necessities of the Court to other Masters, in relation to this 1000*l.* and desired them to consider the Consequences, if this Affair was not taken Care of, *Dormer's* Deficiency must break out; and what he proposed was the only Way to prevent a Parliamentary Inquiry. Upon this *Lightboun* said, he had rather lose the Keeping of the Money and Securities, than hold upon those Terms. The Chancellor replied, That the Buying their Offices is contrary to the Statute of *Edward VI.* and therefore forfeited; and *though it may affect me, yet it will affect you much more, by the Loss of your Places.* But they were Proof against his Lordship's Eloquence; and *seriatim* refused to comply. Then the Earl said, he would pay it himself; which was soon after paid by *Cottingham*: But it seems he forgot to desire *Lockman* to keep it secret, so he told it about, and *Cottingham* rebuked him, saying, *Can't you fare well, but you must cry Roast meat?*

Page 140.

The Evidence I have now last mentioned, almost without other Proof, maintains the whole Charge. The Evidence of the several Discourses of *Cottingham* and *Dixon*; the Meeting the Masters at *Mr. Edwards's*, and the last Conference with the Chancellor; all tending to the same End of Deceiving the King and preventing the Parliament from Enquiring. All the Masters concur in the Meeting at the Chancellor's House; when his Lordship, upon considering their several Accounts, declar'd

declar'd his Approbation of Mr. *Holford's* Subscription; and without Inquiry into their Circumstances, advised them all to make the same Subscription as Mr. *Holford* had done.

It was likewise proved, that the Masters, in order to make a Shew, were advised to assist and stand by each other. *Bennet* and *Conway* are both Instances of this Counsel's being put in Practice. I shall therefore conclude the whole with an Observation from the Parliament Roll of *Henry IV.* *Complaints and Subsidies belong to the Commons, Judgments belong to the Lords, and Redress is the Glory of the Crown.*

My Lords, the Commons have now discharg'd their Duty; they have declared their Grievances, explain'd the Crimes, and produced the Offenders. They are assured, the King will of his Fatherly Goodness, grant a just Redress, and apply a proper Remedy; and they doubt not but your Lordships will pronounce a righteous Judgment.

The FIFTH DAY, Wednesday May 12.

Fifth Day.

The Lords being seated, and Proclamations made as before, the Lord Chief Justice King signified to the Earl's Counsel, that they might proceed: And then

Mr. Serj. *Probyn* (after an Apology for his Inability to discharge his Part of the full Defence which might be made for the Earl impeach'd, and for the short Notice he had to prepare for it) observ'd, that the Commons had wav'd several of the Twenty-one Articles, and he hop'd their Lordships would acquit him of the rest. And then he proceeded, in Substance, as follows.

Serj. *Probyn* opens the Earl's Defence.

The impeach'd Earl is pursued through every Stage of publick Life; some Actions truly innocent, are represented as culpable; others which are meritorious reputed Crimes: But not one Instance is given of Corruption, Partiality or Oppression, in his own personal Administration.

The

Page 141.

The principal Objection is, that possibly he may have been too easily led into a good Opinion of some Persons, who have at Length been found not to have deserv'd it; and in whose Crimes 'tis now attempted to involve the Earl.

And in Regard the principal Complaints are founded upon the Disposition of the Offices of Masters in Chancery, they have been represented as Officers of great Trust, associated to the Lord Chancellor, for his Assistance in the Administration and Execution of Justice.

What Assistance they might antiently give, I know not: But at present they seem to be of little Advantage in the Determination of Causes.

They sit in Court, but never interpose in Judgment: They are likewise nam'd in the Commissions; but they can execute no Authority of themselves, in the Absence of the Master of the Rolls, or some of the Judges; who are only included in the *Quorum*. But it was rightly judg'd by the Managers to advance their Reputation, to make it more penal to receive any Present upon their Admission.

Another Observation was made, that, upon the Earl's being constituted Lord Chancellor, he took the usual Oaths, in order to insinuate, that he had acted contrary: And particularly the Oath prescrib'd by the Statute of *Richard II.* But no formal Oath is administred, in Pursuance of that Statute; nor any Record made of any Oath taken.

Page 142.

This Act directs an Oath to be administred, tho' the Form is not prescrib'd. But the Act itself can't be call'd the Oath: And the reading it (upon the Choice of Sheriffs) is rather an Admonition, how they ought to demean in that single Instance.

If the Construction, now contended for, was admitted, many might be thought guilty of Perjury, who never apprehended it: But, in whatever Light it is taken, it can't be an Oath within the Intention of the Charge.

The first and general Charge is, that the Earl did corruptly receive great Sums, in Breach of his Oath, and Violation of his Office: But the present Circumstances of his Family and Fortune will demonstrate, that he is not that rich, avaricious, and corrupt Man as he is represented. As he receiv'd large Bounties from his Majesty, he has been abundantly liberal to proper Objects. Page 143.

The Instances given of the Corruption charg'd, relate to the Sums receiv'd from the Masters, nam'd in the 5th, 6th, 7th, and 8th Articles, and the Clerk of the Custodies in the 9th.

If that Charge be a Crime, it must be so in its own Nature, at Common Law, or by some Act of Parliament. Taking a Present upon Nominations to Offices, is not a Crime in its own Nature; for no Man has a particular Right to these Offices: And if the Office be valuable, so is the Right of Nomination to it, and may be esteem'd as Part of the Estate of the Person to whom it belongs; and therefore he has a Right to make any legal Advantage of it.

Instances may be given of Offices of Justice antiently purchas'd. In *Maddox's History of the Exchequer*, we find a Justice of the *King's Bench*, and even a *Chancellor*, purchasing their Offices: And if this had been thought criminal, we should have had some Instances of their being adjudg'd so. Page 144.

As to the Statute of *Edw. VI.* it can't be extended to the present Case. Here are no prohibitory Words against bargaining and selling Offices, nor declaratory that they could not do so by common Law; and penal Laws are not to be extended beyond the Letter.

The Chief Justices of the *King's Bench* and *Common Pleas*, and Justices of Assize, might have sold the Offices under them, before this Act: And, by a Proviso in this Act, they may do so still.

Supposing the Presents made to the Earl can be interpreted a Selling of an Office, within this Act, it can't (according to *Castle's Case*, *Cro. Jac.* 644.) be liable to any other Punishment than what the Act itself directs; and this the Earl

has already suffer'd, by his Loss of the Great Seal.

Another Answer made to this Charge, is the Example of the many great and learned Persons his Predecessors. The Precedent is antient: And the immemorial constant Usage, will sufficiently establish it.

Page 145.

The Distinction between a *Present* and a *Price* is just; and the Earl's Case is exactly within it.

The Presents made by *Kynaston*, *Bennet*, *Elde* and *Thurston*, were not equal to the Favours receiv'd, and may be rather said to be extorting a Favour from the Chancellor, than Money from the Master.

Page 146.

The next Charge is corruptly admitting Persons into that Office, not duly qualified for it, and bartering and haggling for the Prices. It is insisted, that they paid it out of the Suitors Money; and that they were encourag'd in it to enhance the Price: And that no Security was given to answer the Effects.

It may possibly be wish'd, that some better Method might be found out for the Suitors Security. But the ancient Practice of every Court is the Law of that Court: And it would be dangerous for any one Judge to vary it. He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts against Precedents is justly to be suspected.

The Earl found the Suitors Money in the Custody of the Masters without Security. Was it prudent for him to oppose his single Opinion to the united Judgment of his many wise and great Predecessors? Deficiencies had happen'd before, and supply'd by the Contribution of the other Masters. Why was not Security then demanded? And why not the other Masters Accounts call'd for, if that had been thought either prudent or practicable? That is a good Excuse in the present Case.

There has not been any Proof, that any of these Masters were really insufficient at the Time of their Admission, or at least, that the Earl had any Reason to suspect it.

But

But great Stress is laid upon their paying for their Offices out of the Suitors Money. Supposing that, had the Earl any Notice of that Practice? Or how could he have prevented it? No way, but by ordering the Money out of their Hands? And then, how should it have been dispos'd of? Publick Societies would not submit to the Directions of the Court; and no private Person could give Security for so great Trust.

The Masters are in the Nature of Cashiers: They subsist on Credit? and no Security can be expected more than of a common Banker. But 'tis said, if Security could not be expected, why were not Schedules taken of their Effects? The Chancellor has not Leisure to attend it personally: And what other Person more fit to be trusted to inspect the going out Master's Accounts, than his Successor, who is charg'd with the Effects transferr'd?

This has been the antient Practice of the Court: And the same Method was used by the Earl impeach'd, as in former Cases.

But, supposing, that greater Care might possibly have been taken, have the Suitors been any way injur'd by that pretended Neglect?

If any corrupt Agreement had been made by any new Master, previous to the Transfer, could not he have complied with it after the Transfer? And would any previous Caution prevent it? I apprehend, not at all. This projected Security is therefore but imaginary, and gives the Suitor no greater Advantage than he had before.

The going off of Mr. *Dormer* was unforeseen: His Person was withdrawn; but all imaginable Care was taken to secure his Effects.

A Proposal was made, that on Security of his Liberty, he would return, and assist to get in his Effects. This is thought reasonable, and accordingly complied with. The unhappy Man returns; and delivers all in his Power, for the Benefit of the Suitors. Could any thing be more advantageous to them? As to the Expressions insisted on, that *Mr. Dormer was only gone to take*

the Air, &c. I don't remember them mention'd in the Evidence.

The Earl did all in his Power for the Suitors. When Mr. *Edwards* was appointed the Successor, the 5000*l.* which he gave, was applied towards the making up his Deficiency: *Dormer's* real Estate was secured to the Suitors; and it was believ'd, the rest would have been supplied by the other Masters, provided they could be continued upon the old Establishment.

Dormer's Deficiency does not appear to have happen'd through Extravagancy or Misapplication. He intrusted *Wilson* as his Banker; who was then in good Credit. *Wilson* had Dealings with *Poulter*, in the fatal Year 1720, and was reduc'd. His Debt of 24046*l.* to *Dormer*, was assign'd over by *Dormer*, being his all. Mr. *Edwards* found *Wilson* not able to pay the whole. A Proposal is made of a Composition; which was reported reasonable, and order'd to be accepted. All or most of the Masters consulted, and consented to it.

But 'tis objected, that this Transaction was private and clandestine; and no Notice given to the Suitors.

'Tis the Duty of the Clerk and Solicitors to see the Orders drawn up, entred and registr'd; and can't affect the Earl.

One thousand four hundred Pound was paid in upon this Composition, and 1000*l.* since. Could any thing have been secur'd to the Creditors without this Composition.

In the Fifteenth Article, the Earl's calling for the Masters Accounts (which plainly tended to the Good of the Suitors) is interpreted to their Prejudice.

Page 149.

In February 1720, my Lord was willing to look into the Masters Accounts, and propos'd to 'em to advance Money to help to pay the Deficiency. And 500*l.* a-piece is rais'd by nine of 'em, and applied accordingly; the last of which was paid in August 1721. On the 7th of November 1721, a second Letter is written, to hasten the Accounts: But the Labour prov'd too difficult, and was given over

over till a more convenient Time. This also was following the Example of another Great Man in *Dr. Edisbury's* Case; which was less favourable than the present, in some Circumstances [*here recited.*]

As to *Mrs. Chitty's* Case, we shall prove, that the Chancellor, out of pure Compassion, paid 1000*l.* out of his own Pocket, but told *Lockman* he must expect no more *from him*, but wait till the Money could be advanc'd some other Way.

The Earl firmly believ'd, all the Suitors would in Time be made easy. For this End, the Masters were often call'd upon; and most of them were convinc'd, the Proposal was just. Page 150.

As to the Expressions in *Harper's* Case, they can have little Weight. He could not properly enter upon the Inquiry into the Deficiency, upon uncertain Reports or private Information: But now that it came judicially before him, he would thoroughly examine the Matter, and endeavour a proper Remedy. But Time has been wanting to proceed as he intended.

When the Court order'd the first Payments, there did not appear any certain Deficiency, or at least no Pretence of judging how much.

Another Objection is, the great Sums deposited with the Masters, without Security; and the Proposals made to the Earl for securing those Sums. Page 151.

Mr. Lightboun first mention'd the Proposals. He had before communicated it to *Mr. Holford*. The Chancellor receiv'd it kindly; desir'd him to reduce it into Writing; took Time to consider it; frequently talk'd with him about it; shew'd an earnest Desire it might be done, but thought the Scheme not Effectual. Many Consultations were had with the Master of the Rolls and all the Masters: But the Master of the Rolls insisted, that the Masters should give up their pretended Power of Judicature, before he would enter upon the other Question. *Mr. Lightboun* was the Person that oppos'd this, tho' to the Destruction of his own Proposition.

When Facts are prov'd before your Lordships, no Observations can be equally instructing as your own.

Dr. Sayer proceeds in the Earl's Defence.

Then Dr. Sayer proceeded, in Substance, as follows.

Page 152.

The Articles exhibited by the Commons, charge the Earl with *Corruption* and *Extortion* in the most odious Manner; and the learned Managers have heighten'd every Circumstance with the greatest Art and Eloquence; every ill Turn which his Actions, his Words, his very Omissions could be imagined capable to receive, hath been given; Suspicions and Jealousies have been rais'd; and every Consideration forgot, which could interpret them in his Favour.

This was their Duty, as Managers: But we hope to be able to defend the Earl against the Facts they have alledged; and shew they were either not done, or done with Innocence and Honour.

The Words *Orphans, Widows, and Lunaticks*, have been employ'd to raise Tenderness and Compassion, and to arm your Lordships against every Argument we can offer. Well was it commanded by the *Jewish Law, Not to respect the Person of the Poor, in his Cause.*

It needs no Proof, that the noble Earl was once *Lord Chief Justice of the King's Bench*; and his Conduct there will be some Defence.

I may appeal to the Managers, whether they have not commended his *Zeal* and *Intrepidity* in the Cause of *Liberty* and our Country, and his *uninfluenced Behaviour*?

But supposing, upon so very strict an Enquiry into the Conduct of any great Man, something *amiss* was found, yet his former Merit is not quite to be forgot.

The Foundation of the Charge is, the *Disposing of several Offices for considerable Sums of Money.* The Preamble sets forth, "That about May 1718, the Earl was appointed Lord Chancellor of Great Britain, and did thereupon take the usual

“ usual Oath for the Execution of that high Office, and other Oaths, as hath been accustom’d.” And the subsequent Articles charge his Lordship with Violation of his Oath as Lord Chancellor.

The Earl, in his Answer set forth at large the Oath he took as Lord Chancellor when first appointed; and insists he took no other Oath of Office. This was not the Oath he violated, but one which by the Articles he is no where charg’d with ever having taken. Upon the Choice of Sheriffs the 12th of Rich. II. is read over in Old French by the Clerk, and all present at the Council kiss the Bible. It is this with which they would affect the Earl. But that Statute is in no other Instance, besides this of Sheriffs, at present taken Notice of. It may perhaps afford some Protection to a First Minister, in laying him under the Obligation of an Oath, to put none into any Office who shall pursue or solicit by himself or by other.

But the Preamble makes mention of no Oaths, but what were taken by the Earl, upon his Majesties Appointment of him to the Seal, and the Articles charge him only with Violation of his Oath, as Chancellor. Page 153.

The Earl has insisted, That the making Presents has been long practised in the Time of his Predecessors; that such Presents have been reckoned antient Perquisites of the Great Seal; that the making, and accepting them was never before look’d upon as criminal. This we shall make fully appear by Numbers of Witnesses. If the Practice in itself was not quite so regular at first; yet sunt tolerabilia quæ consuetudo comprobatur.

Usage (if antient) makes the Common Law of England, and tho’ with us it cannot repeal a Statute, or destroy its Force, which it does in other Countries, yet there is Equity to be observed.

The Earl says, He hopes the giving or receiving Presents on such Occasions is not criminal in itself, or by the Common Law, and there is not any Act of Parliament by which it is made criminal, or subject to any Punishment. To this the Gentlemen talk’d of Common Law, and Statutes, but

have produced none, except 12 Rich. II. and 5 and 6 of Edw. VI. and a few Inferences drawn from them.

The Writers upon the Law of Nature have distinguished between *selling Justice* and *Offices concerning the Administration of Justice*. With them *Selling Justice* is absolutely forbid, is absolutely corrupt and immoral. The *Selling Offices* is Matter of meer Policy, varied in different Governments, *prohibited* in some, *allowed* in others.

Among the Romans, tho' the *Sale of Offices* was generally forbid, yet it receiv'd great Alterations: When Elections of the Magistrates were popular, the Votes of the People were bought and sold: Frequent Laws were made to restrain it, and are now Part of the Civil Law, But all proving unsuccessful, the Emperors took Occasion from this to usurp upon the People, and the Courtiers carried the Benefit, and took *Brokage* for their Interest. *Theodosius* the Emperor gave Countenance to the Practice. The Emperors themselves in Process of Time took Share of this Advantage, as is evident from two *Novels* of *Justinian*. *Novel 8.* and *161.* which were intended to prevent the future Sale of Offices.

Page 154.

Then he shews, that the Statute of *Edw. VI.* proves *the Sale of Offices* is now permitted, and was generally before that Statute by the Common Law: And that the Act of *Rich. II.* could never be intended to reach *Offices of this Nature*.

Page 155.

I can't help, as I pass, taking Notice of the Circumstance with which the Article of Mr. *Fburston's* Admission is introduced; *That Borret died insolvent, greatly indebted to the Suitors, and the Earl without securing a just Satisfaction admitted him.* The Earl is not so much as charged here, with a *Knowledge of this Insolvency*; and the *Knowledge* only can create the Guilt. Mr. *Godfrey* was directed by the Earl to inspect *Borret's* Affairs: He has deposed, that he told the Earl, he thought *there wou'd be no Deficiency in his Office.* This he said was his own sincere Opinion, and gave good Reasons for it; but to that fatal Year

Year 1720, the Masters owe their whole *Distress*, and to them the Earl, tho' innocent, *this aggravated Charge*.

Every Expression, every Action which could bear an Ambiguity, has been collected to form a Crime. The Earl has *received Money for his Offices*; his *Aim* is therefore *Gain by Sale of Offices*. An easy Inference; and whatever is after *said or done*, or *vice versa*, is at first *Suspicion*, and then *Evidence* against him.

The Office of Chancellor is *precarious*, and only during *Pleasure*; and subject to be removed upon the *very first Offence*. Upon this Contingency, what would the *Chance* of disposing of a Master's Place be worth? A very Trifle. And can your Lordships suspect a Character, once allowed so *worthy*, of doing such little Things, and yet to promote this *illegal and corrupt Gain* on which his *Heart was eagerly set*? The Earl is further charged, with having admitted Masters who were of *small Substance and Ability*: They have no where so much as *insinuated* that the Earl knew them to have been as charged. It will appear in Evidence, that not only previous Inquiries were always made, and none admitted who came not *well recommended*, or *personally known* to the Earl himself. But to make some Excuse for the Earl's good Opinion of Mr. T. Bennet, and his *Circumstances*, it is evident, that when he was admitted, he had an *Estate* of between 5 and 600*l. per Annum*, besides an Office for Life of 250*l. per Annum*, kept his Coach, and then liv'd in Reputation.

As to the Schedules, the Neglect of which is Page 156. made so *criminal*; the taking of them could not prevent the *Fraud* complain'd of. For what would be the Difference, in *deducting the Sum upon the Transfer*, or *repaying in the Minute after*? But supposing it to be as charged, the only Consequence I see is, that *both Masters* are bound, and the Suitors have by it a *double Security*.

The Earl upon the first Notice of *Dormer's* Affair, took all possible Care both to *save the Effects*, and *secure the Office*. He sent the two senior Masters

sters to search his Chambers, and to stop the Transfers of all Stock, which stood in his Name, in any of the publick Companies. His Liberty was all *Dormer* asked, and that upon Condition only of a full *Discovery*, and a fair *Assignment* of all he had. He return'd, and we hope has honestly perform'd this; his Office was sold, and every thing done, *not to conceal*, but to supply the *Deficiencies*. As to *Wilson's* Composition, the Suitors were not Parties to it, and I conceive, if the *Composition* was trifling, and *unjust*, the Suitors are still at *Liberty* to proceed: It must be admitted that the *little*, which is gained, is owing to the *Composition*. The Earl could have no Reason to doubt the Justice of the *Proposal* of Mr. *Wilson*, after Mr. *Hiccocks* had reported it, and Mr. *Edwards* pray'd the Earl to order him to accept it.

The Masters themselves made the *Proposal* of contributing (except Mr. *Lightboun*) and pay'd their Money *voluntarily*. Yet it will appear in Evidence, that after the several *Payments* were made, the Earl complain'd of their Delay, and required their Accounts.

As to the Cases of *Chitty* and *Harper*, the Earl can no more be supposed to have intended a *Concealment* of *Dormer's* Deficiencies by the Order he made, after he had expressly mentioned in open Court the several *Accidents*, by which they had happen'd, than he could by the *Payment* of 1000 l. to Mr. *Lockman*, when he told him, that it would be the last *Payment* Mrs. *Chitty* was likely to receive, the *Residue* being in great *Danger* from *Dormer's* Deficiency.

Page 157.

How far the Earl is guilty of obstructing the *Inquiry* his Majesty had directed, or instrumental in deceiving the Council-Board, we submit upon their own Evidence: It appears, that at the Meeting at Mr. *Edwards's* House, all of them declared they were able to answer their several Ballances; and when the Subscriptions were sign'd, they were believed to be as they had declared themselves:

The Earl barely recommended it, as being what their senior Master had made, and better in Form than

than others, which were then produced. And as to the Advice, Cottingham gave it without the Earl's Privity or Knowledge.

Then Mr. Lingard, Common Serjeant, after a short Observation on the Preamble, as to the 4000 *l. per Annum* allowed the Earl, proceeded, in Substance, as follows. Mr. Lingard proceeds.

The Matter charged as criminal upon the Earl, in the Articles I propose to speak to, is, That he did illegally and corruptly, insist and take, several Sums of Money for admitting the Persons named in the 5th, 6th, 7th and 8th Articles to be Masters in Chancery; with a small Variation in the 8th, by Way of Aggravation, that there was a Deficiency in that Office, there taken Notice of: And for permitting T. Bennet as it is alledged in the 9th, to resign his Office of Clerk of the Custodies; which is a Charge much of the same Nature with the four preceding. Page 158.

It has been insisted on, that this is a Matter which is *Malum in se*, a Crime at Common Law, as well as against the Statutes of 12 Rich. 2. and 6 Edw. 6.

The Earl denies, he insisted on 105 *l.* to permit the Resignation of T. Bennet, mentioned in the 9th Article; or did refuse to permit or accept thereof, till he had paid the same; but admits he received a Present from him, and the Persons in the four preceding Articles. Acceptance of Presents has been practised by his Predecessors, and reckoned ancient Perquisites of the Office.

If they had been understood criminal in the Eye of the Common Law, or against the Statute of 12 Rich. 2. Precedents might have been produced, where Persons had been censured, or punished for a Practice represented as the most vile Sort of Corruption: Yet there is no Precedent, no Judgment to establish and warrant what the Gentlemen of the House of Commons assert to be Law in this Point. Page 159.

It will manifestly appear by the Statute of 6 Edw. 6. that Accepting of Presents is neither *Malum*

Malum in se, against the Common Law, or the Statute of *Rich. 2.*

By the 6th Paragraph of that Statute, there is a Saving for all Bargains, Sales, &c. made before the 1st of *March*, and such are exempted out of the Force of that Act. Then the last Paragraph provides, that it should not extend to the Chief Justices or Justices of Assize, that then were or thereafter should be: These all annually, upon the nominating Sheriffs, take the same Oath; and are consequently under the same Obligation in this Respect, as a Lord Chancellor.

Page 160.

As to the 9th Article, Mr. *T. Bennet* said, That he desired to have the Earl's Recommendation of Mr. *Hammerley* to succeed him as Clerk of the Custodies; and being told at the second Meeting with Mr. *Cottingham*, that a Present would be expected, he said it was very hard and unreasonable to expect a Present from him, who had so lately paid a large Sum, upon his being admitted into his other Office; but a hundred Guineas being insisted on, he was forced to comply, and pay it.

If an entire Credit were to be given to Mr. *Bennet*, it would not amount to a Proof of the Charge contained in this Article; for he has not mentioned one Syllable of the Earl's having refused to permit a Surrender of that Office, or of his having received any Sum of Money for permitting the Surrender thereof.

Mr. *Cottingham* owns, that in his first Discourse with Mr. *Bennet* upon this Occasion, he told him, he believed a Present would be expected to the Great Seal, and that *Bennet* freely offered a hundred Guineas, before Mr. *Cottingham* spoke to the Earl about that Affair. He expressly contradicts Mr. *Bennet*, in what he said of Mr. *Cottingham's* insisting upon a hundred Guineas, and *Bennet's* Agreement to give that Sum at the second Meeting. *Cottingham* swears, the Offer of a hundred Guineas was voluntary, and at the first Meeting. There are several other Contradictions in their Evidence: We shall thoroughly establish Mr. *Cottingham's*

tingham's Reputation; and then there will be no Difficulty in determining, Whether Mr. *Bennet* or Mr. *Cottingham* deserves most to be credited.

In Support of the 5th Article, Mr. *Kynaston* is called, and has said he would have paid but 1000*l.* for his Admittance; and offer'd that Sum, which Mr. *Cottingham* would not hearken to; therefore he paid 1500 Guineas: Mr. *Cottingham* denies Mr. *Kynaston* offered 1000*l.* and swears the Sum offered was 1500 Guineas; and that he never did acquaint the Earl with what passed upon that Occasion, till the whole Thing was settled.

To prove the 6th Article, Mr. *T. Bennet* was Page 161. called again; and differs widely from Mr. *Cottingham*. Mr. *Bennet* says, he acquainted Mr. *Cottingham*, he was willing to give a thousand Guineas: Mr. *Cottingham* has swore that no such Offer was made; but that he freely offered 1500 Guineas.

The very Nature of the Thing, speaks strongly in Favour of Mr. *Cottingham*, and in Contradiction to Mr. *Bennet*; for had he apprehended the Terms so very hard, he would have stay'd, to have seen the Effects of so violent a Distemper, his Lordship then labour'd under; especially when he himself was out of Order also.

As to the Admission of Mr. *Elde*, and the accepting Money upon that Occasion, which makes up the Charge in the 7th Article; and as to so much of the 8th as relates to the like Transaction with Mr. *Thurston*, there is no Evidence given to support those Charges of *Haggling*, or driving a *Bargain*: On the contrary, what was done was voluntary. Mr. *Elde* says, the *May* following his Admission the Earl intimated to him, he would return Part of the Money; and Mr. *Thurston* received several Messages, in Order to a Return of Part of the Money which he had given.

As to the Deficiency in *Borret's* Office, little Proof is made of the Earl's Knowledge of the Page 162. Deficiency, or his Want of Care to be informed of the State of that Office.

Mr.

Mr. *Godfrey* has said, that he and Mr. *John Bennet* were thought the fittest Persons to inspect the Affairs of Mr. *Borret*, after his Decease; and upon Examination Mr. *Godfrey* told the Earl, there was no Likelihood there would be any Deficiency. Mr. *Bennet* indeed differs something from Mr. *Godfrey*, as to the Account, but not materially.

The 64*l.* paid over and above the 100 Guineas on Account of the Clerk of the Custodies, was either paid to the Clerks of the Office, or belonging to other Offices, and not above 33*s.* came to the Great Seal.

Mr. *Lewis* examin'd to the 9th Article.

Serj. *Prob.* We shall shew, that Presents have constantly been made to the Great Seal, on Admissions of Clerks of the Custodies.

Mr. *Rog. Lewis* sworn.

Serj. *Prob.* How long he has been concerned as a Deputy?

Lew. I have assisted as Clerk of the Custodies of Lunatics and Ideots, about thirty-five Years.

Serj. *Prob.* Who came into that Office in his Remembrance?

Lew. Mr. *Henry Wynn* was the first; and Mr. *Roger Thompson* succeeded him.

Serj. *Prob.* Whether Mr. *Thompson* be now living?

Lew. He has been dead nine or ten Years.

Serj. *Prob.* Whether any Present was made to the Great Seal on *Thompson's* Admission?

Mr. *Plumm.* If my Lord can shew any Right to sell this Place, we are ready to hear him; but we submit whether they shall give Evidence against a Person that is dead.

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Mr. *Lutw.* It was never yet attempted to give in Evidence the Actions of other Persons, in Order to expound a Statute. We insist, that it is not material, and that there is no Notice for the Persons charged, to shew how the Circumstances of the Case were.

Mr. *Sol. Gen.* If the Noble Lord makes Use of this Kind of Evidence, by Way of Mitigation, it can be of no Significancy; because the Aggravation

tion or Mitigation must arise from the Circumstances, Manner and Facts of the Offence.

Serj. Prob. The Earl insists in his Answer, That such Presents have been long used, in the Time of his Predecessors, as ancient and known Perquisites of the Great Seal; that it hath been notorious to all, and never before looked upon to be criminal, &c. And we think it our Duty to give Evidence to support it. The Noble Lord's Answer is sufficient Notice to them to be prepared to answer our Evidence. The Precedents of Great Men are strong Inducements to believe, that he had no corrupt Design in accepting the customary Presents: And he might well think himself safe in following such and so many Examples. Page 164.

Mr. Comm. Serj. If this Noble Lord had introduced this Practice by himself, it would be an Aggravation; but if he hath done no more than others, it will be an Extenuation. But here is a Law insisted on, of several hundred of Years standing; and yet no Judgment, that this is criminal. Practice hath often been allow'd to explain such Statutes; and therefore we are under a Necessity to produce Witnesses to this, which is Part of the Matter in Issue; to shew what the Sense of so many great and excellent Men hath been of this old and doubtful Statute.

Mr. Rob. We apprehend, it can't reflect upon any that are dead or living; but as it is the Foundation of our Acting, that our Predecessors have done the same, notwithstanding the Statute, it is a reasonable Inference, that this was not taken to be within the said Statute.

Mr. Strange: I apprehend, we have the same Right to justify ourselves by Precedents, as they have to accuse us by Precedents. What the Earl's Predecessors have done, has been mention'd in Aggravation: And the Case of *Dr. Edisbury* hath been often mention'd; and the Offence aggravated, for not following that Precedent. Whatever the Point of Law may happen to be, it must be said, If this Noble Lord did err, he erred with his Predecessors.

Earl

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Earl of *Maccl.* If I thought it would impeach the Character of any of my Predecessors, I would undergo any Punishment rather than do it. But I hope it was innocent both in them and me. The Common Law is Common Usage; and that which hath been constantly and openly done without Censure, can't be contrary to Common Law. But if this be a Matter that is admitted to have been practised, and to need no Proof, I had rather let this Examination alone.

Serj. *Peng.* The Managers are accountable to the Commons; and therefore, unless they are convinced that they ought to *admit* it, it is not to be expected.

Mr. *Lutw.* Here is an Act of Parliament, a General Act: The Judges are to take Notice of it; 'tis plain and positive. The Counsel make a Doubt of the Construction of it: 'Tis insisted on, that other People have done it unpunish'd. Would any Regard be had to this? The Noble Lord, who hath been a great Master of Evidence, would not have permitted it; they have shewn no Precedent for it; in its own Nature 'tis unreasonable.

Mr. *Plumm.* The Counsel take that for granted which we deny. The admitting these Witnesses to be examin'd, is admitting that it is no Crime. But he himself declar'd it to be a Crime when he told the Masters, they had bought their Places *contrary to Law.*

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Lord *Lechm.* Whether this Practice be insisted on, as a Proof of a Right to these Perquisites, or offer'd as an Extenuation.

Serj. *Prob.* In both Respects.

Then the Managers and Counsel were order'd to withdraw: And being called in again, the Lord Chief Justice King acquainted the Earl's Counsel, that they were at Liberty to proceed as they were going on.

Mr. *Lewis* call'd again.

Serj. *Prob.* Whether any Present was made by Mr. *Thompson* on his Admission?

Lew. I don't know of any.

Serj. *Prob.* By *Wynne* or *Thompson*?

Lew. No. But Mr. *Wynne* told me.

Serj. *Prob.* Is *Wynne* living or dead?

Lew. He is dead.

Serj. *Peng.* What a particular Person told him is not Evidence.

Mr. *Lutw.* They know this was never allow'd.

Serj. *Prob.* If the Man be living the Objection is good; but now he is dead, we hope it may be allow'd.

Mr. *Comm. Serj.* I appeal, whether it is not good Part of the Evidence given by the Managers?

Earl of *Maccl.* We hope they will not oppose this Evidence, which in the Nature of the Thing, is all that possibly can be now given, the Person himself being dead.

Mr. *Sol. Gen.* I never knew the Sayings of a dead Man given in Evidence, to prove a particular Fact; though they have been admitted in Proof of general Usages.

Mr. *Plumm.* This Man here is upon his Oath; but the Evidence of the Saying of another, must be of a Saying not upon Oath.

Lord *Trevor*: If there be a Difference they must withdraw. But I don't see any Reason for it. I will tell my Opinion, that such a Hearsay Evidence is no Evidence.

Mr. *Com. Serj.* Whether he knows any Thing of the Transaction, of his own Knowledge?

Earl of *Maccl.* I believe he does not.

Mr. *Oaker* sworn.

Serj. *Prob.* Whether he knows of any Demand, or Claim, made upon the Admission or Surrenders, of the Clerks of the Custodies, and by whom?

Oaker: I believe my Lord *Cowper* had nothing the first Time, but he thought himself imposed upon in it. As to the second Time, I never could inform myself what was done.

Mr. *Dupper* sworn.

Serj. *Prob.* Whether he knows of any?

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Dupper:

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Mr. *Oaker* examined.

Mr. *Dupper* examined.

Dupper : I gave my Lord *Macclesfield* an Account 250 Guineas was paid upon a former Surrender of that Office, before Mr. *Hammerfley* was admitted.

Serj. *Prob.* From whom had you that Information :

Dupper : My Lords, may I name him ?

Many Lords : Name him.

Dupper : I had it from my Lord *Harcourt* :

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Mr. *Comm. Serj.* I desire to know what he gave an Account of, and if he knows upon what Occasion ?

Dupper : Mr. *Cottingham* telling me that Mr. *Bennet* was going to surrender his Place of Clerk of the Custodies, to his Neighbour Mr. *Hammerfley*. I told him there will be a Piece of Money for my Lord Chancellor ; and I never knew any Offices, or Places under the Great Seal transferred without an Acknowledgment paid to the Great Seal. I had a Copy of the Account of the Profits of the Great Seal kept by my Lord *Harcourt* in his Time, and that 250 Guineas had been paid on the Surrender of that Office.

Mr. *Strange* : If Mr. *Cottingham* did not call Mr. *Hammerfley* Neighbour.

Dupper : He did.

Mr. *Plumm.* If he told my Lord *Macclesfield* of this before Mr. *Bennet* resign'd to Mr. *Hammerfley* ?

Dupper : I did.

Mr. *Lutw.* Had you no Place given you ?

Dupper : I have the Reversion of the Sealer's Place which is not yet fallen.

Mr. *Lutw.* Was there any Money given for that Place ?

Dupper : No, I had it for fifteen Years Service.

Serj. *Peng.* How long after he found this Account, he carried it to *Cottingham* ?

Dupper : I believe the next Day.

Mr. *Laiton* examined.

Mr. *Laiton* sworn.

Serj. *Peng.* Whether he was not formerly a Cursitor ?

Lait. I was a Cursitor almost forty-three Years.

Mr. Comm. Serj. Whether any Money was paid, either by him, or any other?

Serj. Peng. Whether your Lordships Resolution extends to allow an Examination as to the Selling of any other Offices not in the Articles?

Serj. Prob. It is Part of the Earl's Defence; That it is usual to take Money for transferring all Offices under the Great Seal; and this is an Office under the Great Seal.

Mr. Lutw. The immediate Questions are only upon two Sorts of Offices, Clerk of the Custodies, and the Masters in Chancery.

Mr. Plumm. Whether he shall make his Defence to any Thing we have not yet given Evidence to.

Earl of Maccl. The Charge against me is, That the taking Money upon admitting Persons into Offices in Chancery is criminal; Part of my Defence is, and I have insisted upon it generally, that Money hath been given for all Offices under the Great Seal. I offer this Evidence to shew I am not criminal with Respect to the Cursitor's Office; their waving that general Article which comprises them, admits it: I hope therefore the Gentlemen will not oppose the going on to make the Proof proposed by my Counsel.

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Serj. Peng. A Person is charged with a particular Charge of one Fact, and he would examine to any another, with which he is not charged. This is besides the Issue, and not before your Lordships.

Lord Townshend: If it is insisted upon, the Counsel must withdraw.

Earl of Maccl. I don't know whether this will not go through a great Part of my Defence, which will be to shew that other Offices have been disposed of by the Masters of the Rolls, Chief Justices, and other Judges; and the Commons have join'd Issue upon it.

Serj. Peng. The Question is in Point of Evidence.

Mr. Sol. Gen. I don't apprehend we have join'd on every Thing the Earl put in his Answer. We insist he is not to give Evidence of the Sale of Offices, but those he is particularly charged with.

Mr. Lutw. We insist he may not enquire in those Matters which we have not charged.

Then the Managers and Counsel were ordered to withdraw, and being afterwards called in again and returned: The Lord Chief Justice King acquaints them, That the Lords resolved, That the Counsel for the Earl be not permitted to give Evidence touching the Sale of the Office of Curfitors, no Evidence being given thereto by the Managers.

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Mr. Tench examined.

Mr. Tench sworn.

Serj. Prob. If he was employ'd in taking out the Patent for *Mr. Thomas Bennet* upon his Surrender of the Clerk of the Custodies?

Tench: I was, and I paid the Fees of every Office of passing the Patent, which comes to between 60 and 70 l.

Serj. Prob. What Officer is he?

Tench: I am Clerk of the Patents to the Attorney General, and Deputy Clerk of the Patents in Chancery.

Mr. Comm. Serj. What Part of those Fees are paid to the Great Seal?

Tench: 1 l. 11 s. 4 d.

Mr. Comm. Serj. Any more?

Tench. The rest went to other Offices.

Mr. Sandys: Where he found the Warrant for passing the Patent at that Time?

Tench: I had it from the Secretary's Office.

Mr. Sandys: How it came there, by whose Direction, and who procured it?

Tench: I drew a Petition by *Mr. Bennet's* Direction, to the Secretary of State, which was referred to the Attorney General; and upon his Report, there was a Warrant.

Mr. Sandys: To what Purpose was that Petition?

Tench:

Tench: It was a Petition reciting the Grant to Mr. Bennet, and that he might resign to Mr. Hamersley's Use.

The SIXTH DAY. Thursday, May 13.

Sixth Day.

The Lords being seated, and Proclamations made as before, the Lord Chief Justice King signified to the Earl's Counsel, that they might proceed.

Mr. Meller called again.

Serj. Prob. Whether he knows of any Sum of Money paid to the Great Seal, upon the Admission of a Master in Chancery, and what Sum? Mr. Meller examin'd.

Meller: I apprehend I am not compellable to give an Answer to any Matter that may be to my Prejudice.

Earl of Maccl. The Question is general, Whether he knows, or doth not know it?

Serj. Peng. He was formerly a Master, and hath not the Indemnification of the late Act: And I apprehend, his Objection is, that he cannot answer this Question, without subjecting himself to Penalty. Page 171.

Mr. Lutw. This General Question tends to make him accuse himself.

Earl of Maccl. These Gentlemen have Right to object; but not to instruct a Witness.

Mr. Lutw. I never endeavour'd to *instruct a Witness*. But, as one of the Managers, I have Reason to take Notice of this Reflection. Besides, for the Sake of our Proceedings, it ought not to be answer'd; and we have a Right to interpose when the same Thing was refused in another Man.

Serj. Peng. It is the Duty of the Managers to take Notice of the Behaviour of the Lord impeached. Whether he apprehends he hath a Right to controul the Managers; or whether that arises from the Seat he enjoys! The first two Days we were told we were *Working up Witnesses*; now we are *Instructing* them! Whence could this Lord

have this Imagination, but from his own former Practice?

Earl of *Maccl.* What I said of *Instructing* a Witness, imported no faulty Way of Instruction. -----
(after a short Pause) I have a great Deal of Preparation not to be disturbed at any Expressions that fall upon this Occasion. But I insist upon an Answer to this Question, Whether he knows of any Money given to the Great Seal, on an Admission of a Master in Chancery? He may answer, without at all affecting himself.

Mr. *Plummer*: The Earl says, that this Gentleman may possibly Answer, and not accuse himself: But if by the Answer he may accuse himself, it is a Reason why he should not answer.

Mr. *Onslow*: The Managers cannot but observe the indecent Behaviour of this Lord, and his unworthy Manner of Treating us. We do not think the Lord at the Bar should be directing the Managers, as if he sat in his Place as Judge: We are here Advocates for all the Commons of *Great Britain*, to demand Justice against this Earl. He hath laid a Trap for the Witnesses to accuse himself; and we insist upon the Objection.

Mr. *Palmer*: In Duty to the House of Commons, I think my self obliged to take Notice of the strange Behaviour of this Lord; and therefore must beg for my self, in the Names of the Managers, and in the Names of all the Commons of *Great Britrin*, that no such Language or Behaviour be used again; if it should, we cannot bear it, but must retire.

Earl of *Maccl.* I desire the general Question I proposed may be ask'd; I think I have a Right to have it answer'd.

Mr. *Plumm.* I object to the Lord's going on. The Lord hath answer'd; we have reply'd; and I insist he hath not a Right to speak any more.

Order'd to withdraw.

Then the Managers and Counsel withdrew, and being return'd, the Lord Chief Just. King acquainted them, the Lords upon Debate are of Opinion,

Opinion, *Mr. Meller* is not obliged to answer that Question.

Serj. Prob. Whether he knows of any Sum of Money paid by any other Person, except himself, upon the Admission of any Master?

Mr. Common Serj. We think, this Question will not affect him.

Serj. Peng. We submit, Whether this Question differs at all in Consequence; though it be not in the same Words, it is to the same Effect.

Mr. Lutw. The Question implies he gave Money himself.

Lord Lechmere: Name the Master, or any other particular Fact; then it will appear, whether that be a proper Question.

Serj. Prob. We apprehend, we are at Liberty to ask this Question in the Form proposed; otherwise we shall in a great Measure be precluded from the just Defence of the noble Earl.

Mr. Common Serj. I beg Leave to know, Whether or no we have Liberty to ask this Question.

Lord Trevor: It is proper he should name some Person, concerning whom he would ask; otherwise, it is indirectly to overthrow your Lordships Resolution.

Earl of Maccl. Whether he knows any Thing concerning any Money paid by other Persons? and to name them particularly.

Lord Chief Justice King: You hear the Question.

Mell. I have heard *Dr. Eddisbury* say——

Mr. Lutw. We object to this, as not being Evidence; but only Hearsay.

Mell. I know no other.

Mr. Lovibond called.

Serj. Prob. *Mr. Lovibond* is one of the present Masters, and therefore within the Indemnity of the late Act. What Sum of Money was paid to the Great Seal, on his being admitted a Master in Chancery? *Mr. Lovibond* examin'd.

Lovib. *Mr. Browning* settled the Matter with the Great Seal, and told me, I must send 700*l.* to *Mr. Cottingham* or *Mr. Appleby*. I did, and was

sworn in that Night. Lord *Harcourt* was then *Chancellor*.

Mr. *Strange*: Whether he was admitted upon a Death or Surrender?

Lovib. Upon the Surrender of Mr. *Pitt*.

Earl of *Strafford*: How much he gave Mr. *Pitt*?

Lovib. 2000*l.*

Lord *Harcourt*: Whether he paid the 2700*l.* out of his own Money, or the Suitors?

Lovib. Out of my Own.

Lord *Harc.* Whether Mr. *Pitt* deliver'd over to him all the Money of the Suitors then in his Hands?

Lovib. I believe he did.

Mr. *Cottingham* called.

Mr. *Cottingham* examin'd.

Serj. *Prob.* Whether he knows any Thing of the Payment of any Sum of Money on the Admission of Mr. *Holford*?

Cotting. Mr. *Holford* came under a good Character to my Lord *Harcourt*; and either 800*l.* or 800 Guineas was given on his Admission, for the Use of my Lord *Harcourt*.

Lord *Leckmere*: To whom was it paid?

Cotting. I cannot say, Whether to me, or Mr. *Appleby*.

Dr. *Sayer*: Who carried the Proposal?

Cotting. I did.

Mr. *Lutw.* Whether Mr. *Holford* hath ever since maintain'd that good Character?

Cotting. I never heard any Complaint against him.

Mr. *Lutw.* Who paid the Money?

Cotting. I believe Sir *Richard Holford*.

Mr. *Common Serj.* Whether on a Death or Surrender?

Cotting. Upon the Surrender of Sir *Robert Legard*?

Lord *Harc.* Whether all the Suitors Money was delivered up by Sir *Robert Legard* to Mr. *Holford*, at the Time of his Admission?

Cotting. I believe it was.

Lord *Harc.* I desire Mr. *Holford* or Mr. *Appleby*, or both, may be called.

Mr. *Holford* called.

Lord *Harc.* Whether when he was sworn Master, Sir *Robert Legard* transferred over to him all the Effects of the Suitors? Mr. *Holford* examined.
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Holford: He did.

Lord *Harc.* Whether the Money presented to the Great Seal, was his Fathers, or his; or out of the Suitors Money?

Holf. My Father paid it.

Earl of *Straff.* What Money he paid Sir *Robert Legard*, on his Admission to his Place?

Holf. I believe 2000 l.

Serj. *Prob.* How long it was after his Admission, before the Accounts and Effects were deliver'd over to him?

Holf. A Day or Two.

Mr. *John Bennet* called.

Serj. *Prob.* What Money he paid to the Great Seal on his Admission? Mr. *J. Bennet* examin'd.

Bennet: In March 1716, about two or three Days before I was admitted, I gave Mr. *Woodford* (the Secretary of the Great Seal) 500 l.

Serj. *Prob.* Who was Chancellor?

Benn. Lord *Cowper*.

M. Common Serj. Whether he came in upon a Surrender or Death?

Benn. Upon a Surrender.

Lord Chief Justice *King*: Of whom?

Benn. Mr. *Medlicot*.

Lord *Bathurst*: Whether he paid it out of his own Money?

Benn. Out of my own.

Lord *Bath.* When the Accounts were delivered over to him?

Benn. The Effects were all deliver'd over to me in a Week's Time, except some very small Matters.

Lord *Bath.* What was the Money given your Predecessor?

Benn. 3000 l.

Lord *Bath.* Was that paid out of the Suitors Money, or out of your own?

Benn. Out of my Own.

Sir *Tho-*

Sir Tho. Gery
examined.

Sir Thomas Gery called.

Mr. Common Serj. What he knows hath been paid to the Great Seal, upon the Admission of a Master in Chancery.

Sir T. Gery: I never knew of any Sum paid to the Hands of any Lord Chancellor whatsoever.

Serj. Prob. Whether he hath known any Money paid to the Use of the Lord Keeper, or Lord Chancellor, upon the Admission of any Masters.

Sir T. Gery: I cannot tell how that may affect me; I think I am not bound to answer.

Lord Harc. Whether he ever was required in any Lord Keeper's or Lord Chancellor's Time, to make up any Account of the Suitors Money, and if he did so?

Sir T. Gery: Yes, twice in my Lord Chancellor Cowper's Time, and once when the noble Lord that asks me the Question was in that Place; at all those Times I gave a particular Account of the Money in my Hands, the Time it came in, and how it was disposed of, and the distinct Securities, in distinct Columns.

Lord Harc. Did all the Rest of the Masters do so.

Sir T. Gery: I believe they did.

Mr. Steele sworn.

Mr. Steele called.

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Serj. Peng. We desire, before they proceed, to know, if they design to ask as to those Offices your Lordships gave Direction last Night not to ask to?

Serj. Prob. We only ask, Whether Offices in General have not much advanced in their Prices?

Serj. Peng. We apprehend your Lordships Determination is strong against what is now attempted.

Mr. Common Serj. The Question we ask is, as to Employments in General.

Earl of Maccl. I believe this Gentleman is only intended to be ask'd, what Difference there is in Value of Offices, to what they were heretofore? particularly the Price of the Seats in the Six Clerks Office?

Mr. Lutw.

Mr. *Lutw.* The Earl was not to ask concerning the Sale of any Office, but what was in the Articles, and the Managers had given Evidence to.

Earl of *Maccl.* Your Lordships Resolution was, That the Witnesses were not to give Answer, as to their giving Money to the Great Seal; but this is for an Office that does not belong to the Great Seal.

Mr. *Onslow*: This is not mentioned in the Articles, and no Evidence has been given thereto by the Managers.

Serj. *Prob.* Whether the Offices in the Court of Chancery are not increased in Value much beyond what they were seven Years ago?

Serj. *Peng.* That is the Question we object to.

Earl of *Maccl.* It is notorious, Money now carries less Interest; and the Price of all Offices is increased.

Mr. Serj. *Peng.* If they expect any Answer, we give this; That it is not before your Lordships in Judgment.

Earl of *Maccl.* I will waive the Question.

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Lord *Lechm.* Though the noble Lord hath waived the Question, it may be proper for your Lordships Consideration, whether he should ask it, or no.

Earl of *Straff.* I think what the noble Lord hath said is considerable, and proper for our Judgment.

Lord *Lechm.* Repeat the Question again.

Serj. *Prob.* Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office, particularly, are increased now more than antiently they were?

Thereupon the Managers and Counsel withdrew, and being returned, Lord Chief Justice King inform'd them, they were at Liberty to ask the Question.

Steele: I came into the Chancery Office in 1687, I know that waiting Clerks Places, in that Year, and for several Years afterwards, were bought for 50 Guineas; and since that Time I have known them sold for 3, 4, and 500 l. My Master

Master was a sworn Clerk, and sold his Place for 230*l.* since that Time I have known a sworn Clerk's Place sold for 800*l.*

Serj. *Prob.* What Money had they upon taking a Clerk at that Time ; and what now ?

Steele : I gave 100 Guineas, in 1703 or 4, with my Brother-in-Law, to Mr. *Atkinson* ; since that my Brother-in-Law had 300*l.* or 300 Guineas with a Clerk.

Mr. *Lutw.* How many there were in the Year 1687 ?

Steele : Sixty sworn Clerks. Since, there was an Addition of Thirty.

Mr. *Lutw.* Whether they are not intended to be reduced ?

Steele : If any one dies without surrendring his Office, they do not fill up that Place.

Mr. *Lutw.* How many are there now ?

Page 177. *Steele* : About 16 or 17 above the 60 remaining.

Mr. *Lutw.* Whether the Offices are not better, by their being fewer ?

Steele : They are.

Mr. *Lutw.* Whether some Clerks, whose Predecessors have had good Business belonging to the Office, have not made that Seat sell better ?

Steele : Certainly it doth.

Mr. *Common Serj.* Was 50 Guineas paid for a waiting Clerk's Place, before the Increase of the Additional Number of Clerks ?

Steele : Much about the Time.

Mr. *Common Serj.* Whether Prices began to rise before any Reduction was made ?

Steele : Yes.

Serj. *Prob.* When was the Reduction made ?

Steele : I cannot tell exactly.

Serj. *Prob.* Whether there was not a Difference of Price between those Seats which were full or empty of Business, or were all at a Par ?

Steele : The Price varied, as there was much or little Business.

Mr. *Cary* : Whether there hath not been an Act of Parliament since the Time he mentions, which hath been beneficial to the Sixty Clerks ?

Steele :

Steele: There was an Act of Parliament, called, *An Act for the Amendment of the Law*; in my Opinion they were better before the Act, than they are now.

Mr. Goldsbrough called.

Mr. Common Serj. Whether those two Sums given by *Mr. Kynaston*, and *Mr. Bennet*, to my Lord *Macclesfield*, were paid back again, and when, and in what Manner? *Mr. Goldsbrough examined.*

Gold. The 23d of *Feb.* last, my Lord *Macclesfield* came into Court, and deposited 3000 Guineas. The Lords Commissioners directed the Investing it in *South-Sea* Annuities, for the Benefit of the Suitors.

Mr. Common Serj. Whether the Money paid into the Masters Hands, is by Compulsion, or at the Instance of the Parties. Page 178.

Gold. Where Estates are to be sold, they order the Money to be brought before the Master.

Mr. Lutw. When first he knew the Office, whether it was usual to direct the Money to the Masters, in the Manner it hath of late been directed?

Gold. I cannot say it was.

Mr. Lutw. Whether there were not some Orders made by the Chancellor, as well as by the Master of the Rolls, for Payment of Money to the Usher of the Rolls? that is, into Court?

Gold. Yes.

Mr. Lutw. Explain the Difference between paying Money into Court, and paying it to a Master.

Gold. Paying it into Court is paying it to the Usher.

Mr. Lutw. How soon were those Orders varied?

Gold. I cannot remember. I do not know that those made before Hearing, and for Continuance of Injunctions, are alter'd yet.

Mr. Lutw. Whether he had any Directions from Lord *Macclesfield* touching the varying Orders for the Payment of Money?

Gold. Money paid before Hearing was paid into Court; Money paid upon the Decree, was brought

brought before the Master: I had no Direction from him.

Mr. *Lutw.* Was there any Variation in the Orders, for some Time after the Usher gave Security?

Gold. Upon interlocutory Motions the Money was, and still is, brought before the Usher.

Mr. *Lutw.* How the Orders were at first?

Gold. On all Orders interlocutory before Hearing, it was paid to the Usher; on those subsequent, the Money was brought before the Master.

Earl of *Maccl.* The Difference between the paying Money into Court, and bringing it before the Master?

Gold. Money brought into Court, is Money brought in before Hearing, and is subject to Orders, as the Case requires: Money brought in after Hearing, is to be put out on Security, and is brought before the Master.

Earl of *Maccl.* Whether, when Money is order'd in, to be dispos'd of, it is brought into Court, or before a Master?

Gold. Since the Revolution, it hath been generally brought in before the Master; before, it was brought into Court.

Earl of *Maccl.* Have the Orders made by me, since the Usher gave Security, been made in the same Manner, as those by my Predecessors?

Gold. The very same.

Earl of *Maccl.* When first the Money paid into the Usher went into another Course; and what Method was taken then?

Gold. After the Revolution there was a Defect in the Usher's Security, and the Money was order'd before the Master.

Earl of *Maccl.* Afterwards was there not an Alteration? Was it not order'd in before the junior Masters?

Gold. In Lord *Cowper's* Time, when there was a Difference between the Usher and his Deputy, his Lordship order'd the Money into the two junior Masters Hands. Each of them was to keep a Key, and the Usher another.

Earl

Earl of Maccl. Had no other Masters then any brought before them? Page 179.

Gold. Yes.

Earl of Maccl. Upon what Occasion?

Gold. It was found inconvenient: And the Money was after that brought before the Masters to whom the Reference was.

Earl of Maccl. Whether that Money was not such as was before order'd into Court?

Gold. Yes.

Earl of Maccl. Whether you was not present at a Meeting of the Master of the Rolls and others? And what Account you then gave of the Course of the Court in that particular?

Gold. The same as now.

Earl of Maccl. Whether the Usher was not ask'd, whether he had any Precedents? And what the Answer was?

Gold. He said, he had none.

Earl of Maccl. Do you apprehend, that Money brought in before Hearing, is to be paid to the Usher, and after Hearing to the Master?

Gold. Yes.

Earl of Straff. What Security is given by the Usher? And whether 'tis the same now, as before Lord Cowper made that Alteration?

Gold. I cannot say.

Serj. Prob. We shall not trouble your Lordship with any Witnesses, as to Mr. *Elde's* and Mr. *Thurston's* Money (most of which was return'd). But we shall prove, that when Mr. *Thurston* was admitted for 5000 Guineas, another offer'd 6000. Mr. *Cottingham* prov'd the same as to Mr. *Elde*.

Mr. *Ellis* call'd.

Serj. Prob. What he knows of Money offer'd for the Mastership to which Mr. *Thurston* was admitted?

Ellis: On Mr. *Borret's* Death, Mr. *Richard Lucas* came to me, at Lord *Macclesfield's*, and told me, his Brother desir'd the vacant Place. He said, he was so sensible of my Lord's Honour and Generosity, that he would leave it entirely to his Lordship, what he would have. But I was to offer

offer 6000 l. or Guineas; I do not remember which. My Lord told me, Mr. *Lucas* had been well recommended: But I heard no more of it, till my Lord had declar'd, that Mr. *Thurston* should have it.

Mr. *Common Serj.* Whether the Gentleman was not his Friend?

Ellis: Mr. *Richard Lucas* was my Acquaintance: And I told him, in Friendship to him, I would speak to my Lord.

Mr. *Plumm.* What Mr. *Rich. Lucas* himself is?

Ellis: A Clergyman.

Mr. *Plumm.* If he did not lay some Condition upon which he was to pay the 6000 l. And particularly, provided *Borret's* Deficiency was made good?

Ellis: He mention'd no such Condition. He did speak of *Borret's* Deficiency. I told him, I heard there would be none. He said, he had been assur'd there would be none; but however his Brother was willing to treat on those Terms.

Mr. *Robins* enters upon Defence of the 11th and 12th Articles.

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Then Mr. *Robins* (after a long Introduction, touching the Earl's great Endeavours, in order to the Relief of the Suitors, so far as he had Power and Opportunity; the many Difficulties attending that Affair; and the Reasons why no personal Security has ever been requir'd from the Masters, &c.) open'd the Earl's Defence upon the 11th and 12th Articles, in Substance as follows:

The 11th Article contains a twofold Charge. 1. That the Earl corruptly admitted Persons of small Substance and Ability to the Office of Masters. 2. That he falsely represented them, as of great Fortunes, and in every Respect qualified.

It is not charg'd, that he knew of any Insufficiency or Inability in them at the Time of their Admission.

He inquir'd not of themselves, but of others, and determin'd accordingly, whether they were fit, or not. In Consequence whereof, he rejected some, who offer'd him a greater Present, for want of an Estate adequate to the Trust; and refus'd others, from an Apprehension that the great Sums

Sums they offer'd would too much exhaust their Fortunes.

In one Place the Masters are made a Sort of Page 183.
Petty Chancellors, equal to the Judges themselves, and therefore their Places must not be bought and sold: But soon after, they are reduc'd and abas'd to the low Condition of a common Receiver or Rent-gatherer, and must give Security, for fear they should run away with the Money!

One of the Masters has indeed frankly own'd, that he was worse than nothing when he came into his Place: But he owns, that he grossly impos'd upon the Earl in concealing it from him; who justly resented it.

The 12th Article charges, that *the Sums paid* Page 184.
for the Masters Places, were out of the Suitors Money.

This shews only the Contrivances among the Masters themselves, how to get in: And the Earl seems but little concern'd.

But then 'tis charg'd, that *tho' this Practice was notorious, the Earl, for his own corrupt Profit in Selling those Places, took no Measures to prevent it; but suffer'd it, whereby great Embezilments have been made.*

The Earl says, *he was ignorant of this Practice*: But admits, *he never directed the Suitors Money to be deliver'd over by Schedules; and says, he never heard that his Predecessors did.*

The Managers have not prov'd that he knew it, till all the Rest of the World did. But that was too late for him to redress it; for the Great Seal was taken from him before. And if the Earl knew not of these Contrivances, 'twill be no Crime in him, not to cure them.

But if he had known of these Practices, how far would these Schedules have answer'd the End propos'd? If the Masters would but trust one another, or any Body trust them, a few Days, they might have done just as they did before: And that would have made a better Figure in an Impeachment, than what is here fix'd upon.

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Serj. Probyn
proceeds.

Then Mr. Serjeant *Probyn* proceeded in Substance, thus :

Tho' the Charge in the 11th Article be in general Terms, we are only to account for such of the Masters, as they have given Evidence against. As to Mr. *Elde* and Mr. *Tburston*, there is no Pretence of any Deficiency. Mr. *Kynaston* hath given Security to answer his. And Mr. *Tho. Bennet* made an Appearance equal to a Man of Fortune, and was both in Reputation and Fortune equal to those admitted by the Earl's Predecessors.

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And Mr. Common
Serjeant.

Then Mr. Common Serjeant added to this Effect :

It is not to be expected, that Persons of great Fortunes should give themselves the Trouble of these Offices. All that can be expected is, that they have reasonable Fortunes, liberal Education, and good Characters for Integrity and Ability. And these Masters were such.

Then Mr. *Steele* was called.

Mr. *Steele*
examined.

Serj. *Prob.* What Reputation and Character had Mr. *Tho. Bennet* in Point of Fortune, when he was admitted Master?

Steele : He was looked upon to be a Man of good Substance and Reputation.

Serj. *Prob.* Did he keep his Coach?

Steele : I have heard so.

Mr. *Plumm.* Whether he was accounted an honest Man, or no?

Steele : I never heard, or knew any Thing to the contrary.

Mr. *Walker* sworn.

Mr. *Walker*
examined.

Serj. *Prob.* What he knows of any Proposal or Agreement for the Repayment of any Money by Mr. *Hiccocks*?

Walk. Mr. *Hiccocks* was to be examined upon Interrogatories, Whether he had paid over all the Monies and Securities of the Suitors, to Mr. *Bennet* ? It having been alledged, he retained 7500*l.* as appears by the Petition delivered by him, and its Answer.

Mr. *Lutw.* Whether you are not concerned as Clerk for Mr. *Hiccocks* ?

Walk.

Walk. I am his Solicitor.

Mr. Lutw. Had you any Authority from Mr. *Hiccocks* to present that Petition?

Walk. I had.

Mr. Lutw. When did you present the Petition?

Walk. Three or four Days ago.

Mr. Hiccocks's Petition and Order read.

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Serj. Peng. Whether this Order is authentick?

Walk. The original Petition and Answer are in the Register's Office, to draw up an Order.

Mr. Lutw. Is it a true Copy?

Walk. It is.

Mr. Lutw. Did you examine it?

Walk. I did.

Mr. Common Serj. Whether Mr. *Hiccocks* is a Person of Ability, to make good this Sum?

Walk. I believe he is able to do what he hath proposed,

Mr. Lutw. How long ago it was since Mr. *Hiccocks* was ordered to be examined?

Walk. I think the Order is dated the 29th of February.

Mr. Lutw. How long ago is it since this Proposal was made?

Walk. The Petition was presented the 8th of this instant May.

Mr. Lutw. Was the Petition presented before his Examination? When was it answered?

Walk. It was answer'd the 8th of May. There was an Order, That *Hiccocks* should put in his Examination in four Days, or stand committed; thereupon this Petition was presented.

Mr. Lutw. I do not find Mr. *Walker* can say the Money is paid, or Security given?

Walk. Mr. *Hiccocks* told me, 3000*l.* was paid, and I know he hath offered Security for the 4500*l.*

Mr. Lutw. One or two Securities?

Walk. Only Sir *John Buckworth*.

Mr. Richard Rogers sworn.

Mr. *Rogers*
examined.

Serj. Prob. What he knows of the Payment, or the Directing the Payment of any Money into Court by Mr. *Rogers*, the late Master, in Satisfaction of the Deficiency of Mr. *Kynaston*?

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Rogers: I did, by the Direction of Mr. *Rogers*, prefer a Petition about the 28th or 29th of *April* last, to the Lords Commissioners, offering to give a Recognizance to make good to the Suitors of the Court any Sums not exceeding 6000 *l.* as the Estate of Mr. *Kynaston* should prove defective. The Petition is answer'd, and I have it in my Hand.

The Petition of William Rogers, Esq; and the Order thereon read.

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*Then was read another Petition of William Rogers, Esq; Praying the 6000 *l.* may not be applied to make good Kynaston's Deficiency till after Kynaston's Estate was sold; which was never answered.*

Mr. Lutw. Did you give any Notice to the other Side, of the Order on the first Petition?

Rogers: I acquainted Mr. *Paxton*, I had such an Order; but did not serve it upon him.

Mr. Common Serj. Whether he insisted on a formal Service?

Rogers: He said, let it be done, as soon as possible.

Mr. Common Serj. What Answer did you give Mr. *Paxton* upon that?

Rogers: I told him, I was raising the Money by Direction of Mr. *Rogers*.

Mr. Common Serj. Had you any Direction from Mr. *Rogers*, for the Payment of, or raising the Money?

Rogers: Yes. I believe it will be paid in a Day or Two.

Mr. Common Serj. Is there any Reason to doubt of his Ability to raise the Money?

Rogers: I believe he is able to give Security; he is now in Town, endeavouring to raise the Money.

Mr. Holford called.

Mr. Holford
examined.

Serj. Prob. Whether he was not employ'd, as a Friend to Mr. *Thomas Bennet*, to go to Mr. *Hiccocks*; and what Proposals he was to make to him?

Holf. Mr. *Bennet* desir'd me to go to Mr. *Hiccocks* with this Proposal (which I did), That if he would

would pay him back 2000*l.* he could or would Page 190.
take Care the Rest should be paid, and Mr. *Hiccocks* should not be troubled about the Remainder. This I believe was the next Day after he deliver'd the Article of *Money in the Hands of Persons of Ability and Substance*. Mr. *Hiccocks* said, as Mr. *Bennet* had given in that Article, and brought his Name in Question, he would never have any Thing to do with him. I gave him that Answer, and never troubled my self any more about it.

Mr. *Lutw.* Whether Mr. *Bennet* declared he had to pay, the Money in his own Hands?

Holf. No.

Earl of *Maccl.* If Mr. *Bennet* had not told him, he was able to pay the Money, would he have gone upon the Errand?

Holf. If I had not believed what Mr. *Bennet* said to be true, I would not have gone.

Mr. *Thurston* called.

Serj. *Prob.* What he hath heard Mr. *Thomas Bennet* say, in relation to Mr. *Hiccocks*, about his paying back 2000*l.* Mr. *Thurston* examined.

Thurst. Mr. *Tho. Bennet* told me in the publick Office, that if Mr. *Hiccocks* would pay him back 2000*l.* he would make up the Rest himself.

Serj. *Prob.* Had you any Discourse at any other Time with Mr. *Thomas Bennet* about it?

Thurst. I asked him, why he would not pay in as much as he had undertaken, if Mr. *Hiccocks* had paid him 2000*l.* He replied, All he had in the World would not do it.

Serj. *Prob.* Whether he had any Discourse with Mr. *Bennet* at any Time, about his Ability to pay this Money?

Thurst. He explained the Reason, why he paid for the Place he bought of Mr. *Hiccocks* out of the Suitors Money, that it prevented the Mortgaging his Estate.

Serj. *Prob.* Did he say any Thing in Case of Death, Whether he should leave sufficient to satisfy it?

Thurst. He said at that Time, if he died, there would be Estate sufficient to answer it.

Mr. *Plumm*. Whether he mentioned to have insured any Money upon his Life?

Thurst. I have heard him talk of insuring Money on his Life.

Mr. *Elde* examined.

Mr. *Elde* called again.

Serj. *Prob*. What Discourse he had with Mr. *Bennet*, in Relation to the Money in Mr. *Hiccocks's* Hands?

Elde: He said if Mr. *Hiccocks* would pay him 200*l*. he would or could pay the rest.

Serj. *Prob*. We think we have sufficiently contradicted Mr. *Tho. Bennet's* Evidence, as to the Charge in the eleventh Article. As to that Part in the twelfth Article, that the Purchase Money was paid out of the Suitors Money; the Managers have not attempted to prove it by any Witness, but Mr. *Tho. Bennet*; and we submit, whether your Lordships can believe any Thing upon the Credit of his Testimony?

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Mr. *Common Serj*. We apprehend, we have establish'd our Answer to the Eleventh Article; we think the other follows of Course; and that the Noble Earl will stand clear as to any Accusation on these two Articles.

Seventh Day.

THE SEVENTH DAY. Friday May 14.

The Lords being seated, and Proclamations made as before, Lord Chief Justice King signified to the Earl's Counsel, that they might proceed.

Mr. *Strange* proceeds on the thirteenth and fourteenth Articles.

Then Mr. *Strange* proceeded in Substance as follows.

Dormer's Failure happen'd about *Christmas* 1720. About that Time *Wilson*, who had large Effects of *Dormer's* in his Hands, stop'd Payment; which obliged *Dormer*, without the Suspicion of any one, to retire to *Holland*. As soon as the Earl heard it, Mr. *Hiccocks* and Mr. *Rogers*, were appointed to enquire into his Affairs: His Chambers were searched; the Transfer of any Stock in the publick Funds was stop'd: Yet no Steps, that could be taken, whilst he was on the other Side
the

the Water, could be effectual towards the Payment of his Debts.

Therefore, upon a Proposal of Mr. *Dormer's*, to come over, and discover his Effects, for the Benefit of the Suitors, in case he might be assured of his Liberty, the Earl gave him those Assurances, upon that Condition.

It was insisted on, that Application was made to the Earl to secure the Person of *Dormer*. Yet the Managers forgot to call any Witnesses to the Proof of that Particular, therefore it must rest upon the Denial in the Earl's Answer. Page 192.

We hope to make it fully appear, that the complying with *Dormer's* Proposal, was the only Means to procure any Satisfaction. Had not he been induced to come over, his Books and Accounts would never have appear'd; and the Stock could not have been transferred without his Presence or Consent.

Wilson's Composition, is call'd *precarious and trifling*. To shew the Reasonableness of this Composition it appears, his Books were examined by two Masters, and himself upon Oath; and he swore the Composition he then offered, was all he was able to make. At the Time of this Composition *Poulter* was a visible Man, and not suspected; I hope, whatever happen'd after the Composition, will be no Ingredient in shewing it to have been a trifling and precarious one at the Time of making it: And if Part of the Debt had not been taken, the whole might have been lost.

The Suitors were far from being tied down by it: As they were no Parties to the Composition, they were not bound by it, nor is *Wilson* discharged by it as to the Suitors; for he is still liable to them. Page 193

As to the Petitions, Orders and Reports on this Occasion, I never heard it was the Duty of a Chancellor, to see them drawn up and registred.

Mr. *Edwards* has said, that it was he that first proposed it to the Earl, after having advised with Mr. *Hiccocks*, who put him into that Method.

Mr. Parkhurst
examin'd.

We hope the several Steps that were taken, will appear to have been for the Benefit of the Suitors.

Mr. *Dormer Parkhurst* sworn.

Serj. *Prob.* What Conversation passed between him and Mr. *Dormer*, previous to his going abroad; and upon what Occasion he was obliged to go abroad?

Park. Mr. *Dormer* came to me the latter End of *November* 1720, and told me *Wilson* his Goldsmith, had been with him the Day before, and had acquainted him, that the *Monday* following he should be obliged to stop Payment: He had a great deal of Money in his Hands, and was afraid, that as soon as it was known, that *Wilson* was unable to pay, Application would be made thereon, to my Lord Chancellor, and that there would be an Order for his being committed; and therefore to prevent that, he was resolved to retire to some Place or other.

Serj. *Prob.* What happen'd after he was gone abroad? And what Notice was taken of it?

Parkb. In about three Weeks after he had withdrawn himself, I receiv'd a Letter from him, from *Rotterdam*; with a Letter inclosed, which he desired I would shew to some of the Masters. I shewed it Mr. *Rogers*, then carried it to Mr. *Cottingham*, being directed for him.

Serj. *Prob.* What were the Contents of the Letter, relating to his coming over?

Parkb. That he was willing to come over to give an Account of the State of the Office, and of his own Estate; and was willing to make over all his own Estate, to answer the Deficiency, as far as it would go; and do every Thing the Court should think fit to order him, provided he might have his Liberty both before and after.

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Serj. *Prob.* If he knew how it was, that Mr. *Wilson* came to have so much of *Dormer's* Effects in his Hands, and on what Account?

Parkb. He had a considerable Sum of Money paid into his Hands, by Order of Court, and a considerable Sum, which came in upon the Land-Tax, and he did not know at that Time, what
to

to lay them out in, therefore put them into *Wilson's* Hands, thinking them as safe there as in any Place.

Serj. *Prob.* What Steps were taken to secure his Effects; and whether any thing in the Chambers was taken Care of, and by whom?

Parkb. Mr. *Rogers*, a Master in *Chancery*, and I, went to his Chambers: We found several Things, several Land-Tax Tallies; which Mr. *Rogers* took and lock'd up.

Serj. *Prob.* By whose Direction did you understand that Mr. *Rogers* took this Care?

Parkb. By the Direction of the Court.

Mr. *Plumm.* If *Dormer* left this Money dead in *Wilson's* Hands, or if he had Interest for it?

Parkb. I don't know.

Serj. *Peng.* Whether Mr. *Wilson* did not usually keep Mr. *Dormer's* Cash, and the Cash of the Office?

Parkb. I believe he did.

Mr. *Lutw.* How long was *Wilson Dormer's* Banker?

Parkb. Some Years.

Mr. *John Elphinstone* sworn.

Mr. *Elphinstone*
examined.

Mr. *Common Serj.* What he knows of any Orders or Directions given, in Relation to the Effects of Mr. *Dormer* in the publick Funds; and by whom those Directions were given?

Elphin. I went to the Bank; and the Clerk of the Transfer-Office shew'd me an original Order, signed *Parker C.* dated 11 July 1721, ordering all the Stock and Annuities, in the Name of Mr. *Dormer* to be transferred to Mr. *Edwards*, the next Day. I found 3393 l. 16 s. transferred to him. I afterwards went to the *South-Sea* House, and found a Memorandum over *Dormer's* Account, as follows; *Stock not to be transferred without Order from the Court of Directors (he being failed) or from the Court of Chancery:* And I found, that on the 12th Day of July 1721, 2251 l. 14 s. *South-Sea* Stock was transferred by Mr. *Dormer* to Mr. *Edwards*: But I could find no Order for it. I likewise

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likewise went to the *East-India* Company, but found no Stock there.

Mr. *Lutw.* You say there was an Order signed *Parker C.* was there any such Order drawn up by the Register?

Elphin. I know nothing of its being drawn up by the Register. I saw *Parker C.* signed to an Order. I believ'd it was the Earl's Hand.

Serj. *Peng.* He hath a Copy of it; I believe it may be proper to be read.

The Order read.

Serj. *Peng.* Whether he heard the Earl of *Macclesfield* make a Declaration of Mr. *Dormer's* being gone to take the Air?

Elphin. No.

Mr. *Lutw.* Whether my Lord Chancellor made Orders to the Bank, to be left there?

Elphin. I don't know.

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Serj. *Prob.* This was not an Order of Court, but a particular Direction, in his private Capacity, to secure the Effects of the Suitors.

Mr. *Cottingham* examin'd.

Mr. *Cottingham* called.

Serj. *Prob.* How he came to have Notice, and from whom, of Mr. *Dormer's* withdrawing himself; and what Care was taken to secure his Effects?

Cotting. Soon after *Christmas* 1720, Mr. *Parkhurst* came to me, and told me *Dormer* had withdrawn himself into *Holland*; and the Reason was, upon account of his having left Money and Effects of the Suitors in *Wilson's* Hands, who was likewise gone off. I acquainted the Earl; and he directed me to attend Mr. *Hiccocks*, and Mr. *Rogers*, and consider what was proper to be done on that Occasion: We agreed, that it was necessary to get *Dormer* over.

A Proposal was made to the Earl, that in case he came over, he should have his Liberty: The Earl agreed to it. In the mean Time, Orders were given for searching his Office, and securing what Effects and Papers were there.

Then

Then the Earl directed Persons to go to the *Bank* and *South-Sea House*, to stop the Transferring of any Stock or Effects in his Name; and in *April* following *Dormer* return'd, and said he would make a full Discovery of all his Effects, on Oath, on the Condition of having his Liberty.

Mr. Common Serj. Whether or no, he applied to the Masters to make up this Deficiency of *Dormers*?

Cotting. I always apprehended and understood, the Masters would make good that Deficiency; *Mr. Lightboun* excepted.

Mr. Common Serj. Whether he gave any such Page 197.
Information to the Earl?

Cotting. I told the Earl; and I think *Mr. Hiccocks* and *Mr. Rogers* did order me to wait upon him, and let his Lordship know the Body of Masters had undertaken to make up the Deficiency; and *Mr. Godfrey* told me the same.

Mr. Lutw. Whether *Dormer's* Deficiency was ever stated, so as to know how much it was?

Cotting. No.

Mr. Lutw. Did they agree to make up the Deficiency, when they did not know how much it was?

Cotting. I heard some of the Masters say, at first, it was 17,000 or 18,000 *l.* afterwards 20,000 *l.* then 22,000 *l.* and of late it comes out to 20,000 *l.*

Mr. Lutw. Whether they all singly promised?

Cotting. Singly.

Mr. Serj. Peng. Whether this Discourse with the Masters about paying this Deficiency was absolute, or upon some particular Terms?

Cotting. Provided they continued on the old Foot, of having the Money in their Hands.

Mr. Lutw. Whether you acquainted the Earl with this?

Cotting. No.

Mr. Lutw. Whether you ever heard what Interest *Wilson* allowed *Dormer*?

Cotting. *Wilson* told me he allowed *Dormer* very large Interest for his Money; and could have
set

set aside his Debt upon the Score of an usurious Contract.

Mr. Serj. *Prob.* Whether *Wilson* said the Court or the Masters had as much as any other of his Creditors?

Cotting. He told me, the Masters had: And if *Poulter* could be but deliver'd up, he should be very easy; he was sure he was in Circumstances to pay him.

Hunt examin'd.

Mr. *Hunt* sworn.

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Mr. *Common Serj.* We call this Witness to prove the two Judgments, the one against *Poulter*, to shew that there was a real Debt due from *Poulter* to *Wilson*; the other a Judgment by *Wilson* against the Marshal, for *Poulter's* Escape.

Hunt. I examined these two Copies of Judgments with the Records in the Court of *King's Bench*. They are true Copies.

Mr. *Common Serj.* Was he Attorney for *Wilson*?

Hunt. I was the Attorney for him against *Machen* the Marshal; and entred up the Judgment in the other.

The Judgment against *Poulter* (for 18,763 l. 12 s. 5 d.) sign'd 22 Dec. 1721. and also the Judgment against *Machen*, signed 27 Nov. 1724, both read.

Mr. *Common Serj.* If he knows of any Offer made by *Poulter* for a Composition; and what Sum he offered; and how *Wilson* behaved himself on that Occasion?

Hunt. I have heard the present Marshal say, there was 1000 l. offered; but I had Orders from my Client, if any Offer was made to me, not to accept it, but refer the Person who made it to him, for he was of Opinion he was able to pay him.

Mr. *Gandy*
examined.

Mr. *Peter Gandy* sworn.

Mr. Serj. *Prob.* Whether Mr. *Poulter* had not the Reputation of being a substantial honest Man about the Year 1722 or 1723?

Gandy. He was reputed to be worth a great deal of Money, and a very honest Man; he told me he purchased 6000 l. *South-Sea* Stock, which
cost

cost him 36,000 *l.* and transferred it to Mr. *Knight*; and he gave him nothing for it.

Mr. *Lutw.* Whether the Circumstance of transferring Stock to Mr. *Knight*, was not given as a Reason for his Deficiency?

Gandy. He said he had been able to pay *Wilson* every Farthing, if *Knight* had not gone away.

Mr. *Onslow*: What was *Poulter's* Profession?

Gandy: He was Servant to Mr. *Stroud* a sworn Broker.

Mr. *Onslow*: What is your Profession?

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Gandy: A Broker.

Mr. *Lutw.* Did not *Poulter* transact as a Broker?

Gandy: Yes.

Mr. *Strange*: Where is he now?

Gandy: At Rotterdam.

Mr. *Scott* sworn.

Mr. *Scott* examined.

Mr. *Common Serj.* Whether he knew *Poulter*, and what his Character was, as to Substance?

Scott. In the Year 1720 he transacted Abundance of Business. Upon the Fall of the Stocks he told me he was ruined. He said he had large Accounts with *Wilson*, and desir'd me to assist him. Mr. *Wilson's* Agents and I had a Meeting. I told them Mr. *Knight* had 6000 *l.* *South-Sea* Stock of *Poulter's*, without any Consideration, and that *Poulter* was willing to do any Thing they could expect. Some Time after, Mr. *Poulter* having been arrested, and apprehending his Bail would surrender him, he desir'd me to go again to Mr. *Wilson*. I went, and told him, *Poulter* protested to me, he was worth but about 3500 *l.* and he would endeavour to get it made up 4000 *l.* if *Wilson* would accept it: *Wilson* would not accept it, because, he said *Poulter* could pay more.

Serj. *Peng.* What was his general Character, as to his Circumstances?

Scott. He was looked upon to be a very honest Man, and in good Circumstances; he hath been trusted with Thousands and Thousands of Pounds.

Mr. *Plumm.* Whether in June or May 1720, he look'd upon *Poulter* to be a good Man?

Scott.

Scott. In *April* or *May* 1721, he told me his Circumstances; but every body then (except four or five Persons to whom he had made known his Circumstances) reputed him an honest and substantial Man.

Dr. Sayer: Whether in the Year 1720, he was not looked upon to have got a great deal of Money; and for that Reason to have quitted his Business?

Scott. It was then taken so: There were not above five who knew to the contrary.

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Earl of Maccl. This Gentleman hath answered two Things very consistent; that he and three or four more knew *Poulter's* Circumstances; but all other People look'd upon him to be a Man of Substance.

Dr. Sayer: The General Reputation is sufficient for us, to justify what was done. Whether till that Conversation he himself did not look upon him to be a Man of Substance?

Scott: I did.

Mr. Strange open'd the Defence upon the 15th, 16th and 17th Articles.

Then *Mr. Strange* proceeded to the 15th, 16th and 17th Articles, as follows.

The Charge consists of several Acts, as done to conceal *Dormer's* Deficiency.

It appears, by *Mr. Lightboun's* Evidence, that the Contribution was voluntary; that the Proposal came from some of the Masters; and that the Earl left him to his Liberty: And we shall confirm it by *Mr. Cottingham*.

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As to the Master's Accounts, they were call'd for in *Feb.* 1720. *Mr. Dormer's* Failure was at *Christmas*: And this Letter was before he had any Leave to come over, or any Discovery of the Condition of his Office.

Some of the Masters deliver'd in an Account: But *Dormer's* Affair coming on, stop'd the Accounts, till after the appointing a Successor, and the making the Contribution, about *August* 1721. Every body was going out of Town then, but the Accounts were again demanded in *November*.

The true Reason why they were not brought in, was the insuperable Difficulties of the Undertaking;

taking; which is plain from the Proceedings of late in taking these Accounts.

As to the 1000*l.* to Mrs. Chitty, the Article and Evidence both destroy the Supposition, that it was paid, to conceal *Dormer's* Deficiency. Could the Earl intend that, when he declar'd, *the Residue thereof was in Danger of being lost, by Reason of Dormer's Deficiency?*

I shall not repeat our Evidence, relating to the Declaration made in the Cause of *Harper and Case*: But the whole Transaction was after the Accounts had been laid before the Committee, when it was to no Purpose to conceal the Deficiency.

As to the Orders upon Mr. *Edwards*, it appears by his own Evidence, that it was but in one Cause only where the whole Money was paid out; and neither the Earl nor he doubted but that the Deficiency would be made good.

Then Mr. Serj. Probyn added, in Effect, as follows.

Page 202.
Serj. Probyn
proceeded.

We shall begin our Defence, with Witnesses to shew, that the real Design of calling for these Accounts, was to know the Condition of the several Offices, in order to a Redress of their Grievances.

Mr. Common Serj. We shall shew, that the Accounts were call'd for, after the 500*l.* a-piece was paid.

Mr. Cottingham call'd.

Mr. Cotting-
ham examin'd.

Serj. Prob. Whether any Directions were given to call in those Accounts, about Nov. 1721?

Cotting. I did, by Direction of the Earl, write a Letter 7 Nov. 1721. I have a Draught; the Letter was left with the Committee.

Then Mr. Lutwych producing the Letters themselves, they were read by Mr. Cottingham. The first, dated Feb. 14, 1720, to each of the Masters, requiring them with all convenient Speed, to lay before his Lordship an Account in several Columns, of the Name of the Cause; the Solicitor or Agent; the Date of the Order, &c. The second, dated 7 Nov. 1721, signifying his Lord-

His Letters to
the Masters
read.

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Lordship's Surprize, that no such Accounts had been laid before him ; *and peremptorily requiring them before the End of the Term, or he should take other Measures.*

Dr. Sayer : Whether my Lord Chancellor did give such Directions ?

Cott. Yes.

Mr. Plumm. If the Masters did deliver in their Accounts ?

Cott. I don't remember they did.

Mr. Plumm. If after the 500 *l.* paid, there was any other Demand for Money ?

Cott. I know of none, but the 500 *l.* apiece.

Serj. Peng. Why were not the Accounts called for afterwards ?

Cott. I can't tell.

Serj. Peng. Whether he acquainted my Lord, that the Masters would make good the Deficiency ?

Cott. I did.

Serj. Peng. Whether, after that Time, he receiv'd any Orders to send for the Accounts ?

Cott. I can't speak to the Times.

Serj. Peng. Whether the *other Measures* intimated in his Letter to be *taken*, were not signified, that the Cash should be taken out of the Masters Hands ?

Cott. My Lord directed me to write this Letter. All he said was, that he was sorry they had not brought in their Accounts ; and if they did not do it by the last Day of the Term, *he would take other Measures.* What those other Measures were I don't know ; but I apprehended it to be an Order for obliging them to it.

Dr. Sayer : Whether the Masters did not represent to him the Difficulties of it ?

Cott. Some of the Masters told me, they had not kept their Accounts so as to answer all the Particulars in the Letter : Others said, it would take up a deal of Time ; others that the Manner was almost impracticable.

Dr. Sayer : Whether he hath any Paper of the Method of accounting required by the Committee ?

Cott. I have not a Copy of it here. There is an original Order of *Nov.* 3. last, which I left with *Mr. Lightboun*, sign'd by the Earl.

Earl of Maccl. This will come more properly under another Article.

Mr. Comm. Serj. We are now upon the second Letter in 1721.

Earl of Maccl. Whether he can be sure of the exact Time of his acquainting me, that the Masters would make good the Deficiency? Whether this was before or after *Nov.* 1721?

Cott. I can't be sure.

Earl of Maccl. How near was it to *Mr. Dormer's* going out, and *Mr. Edwards's* coming in.

Cott. *Mr. Edwards* came in, in *May* 1721. It was near that Time.

Earl of Maccl. Whether you can recollect the Time you told me of it? Whether it was after or before *Nov.* 1721?

Cott. I can't certainly say.

Earl of Maccl. Did you ever hear of it before the 500*l.* apiece was paid?

Cott. No: It was after. But I don't know that they agreed to make good the Deficiency: I only told my Lord, I thought they intended it.

Lord Trev. Whether the Masters made that Representation of the Difficulty of giving in the Accounts, before or after the second Letter?

Cott. To both the Letters they still made a Representation of the Difficulty.

Lord Trev. Whether after the Representation made after the second Letter, they own'd the Receipt of the second Letter?

Cott. I verily believe, the second Letter was deliver'd to the Masters; but I have no *Memorandum* of it.

Serj. Prob. *Mr. Holford* will explain it.

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Mr. Holford call'd.

Serj. Prob. Whether he had not Notice of the Letter in *Nov.* 1721, for the Masters to bring in their Accounts?

Mr. Holford
examin'd.

Holf. I don't remember that Letter.

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H h

Serj.

Serj. *Prob.* Whether he remembers a second Letter about Accounts ?

Holf. Whether it was a Letter or Message, I can't tell. But between the first Account in *Febr.* 1720, and the last in *November* last, I was call'd upon to account, and had prepar'd it : But this second Letter in *Nov.* 1721, I do not remember.

Serj. *Prob.* How long was it after the Payment of the 500 l.

Holf. A good while.

Serj. *Peng.* Whether after *Nov.* 1721, his Account was ever demanded of him ?

Holf. I deliver'd to my Lord an Account of *Nov.* 1721 : And about a Year before *November* last my Lord requir'd an Account ; and then I deliver'd an Account of Money, not of Securities.

Serj. *Peng.* Whether in Pursuance of that Letter requiring it ?

Holf. Not as I know of.

Mr. *Lutw.* Whether he ever promis'd to make good the Deficiency of Mr. *Dormer* ?

Holf. I never did.

Mr. *Cottingham*
examin'd a-
gain.

Mr. *Cottingham* call'd again.

Serj. *Prob.* What he knows of the Payment of the 1000 l. to *Lockman*.

Cott. The Beginning of *July* last, *Lockman* told me, Mrs. *Chitty* had an Order upon Mr. *Edwards* for 1000 l. That she could not get the Money, and that he had spoke to my Lord, who had promised to speak to the Master. He desir'd me to speak to my Lord ; which I did, and he sent me to the Master. He said, he had no Money. I told the Earl ; who said, he could not tell what to do. I inform'd Mr. *Lockman* ; and he said, If he had not the 1000 l. he was undone ; he was going to marry Mrs. *Chitty*, and she had given him this 1000 l. to pay his Debts. I have not seen a Gentleman in greater Distress than he appear'd in. I consider'd, that Mr. *Lightboun* had not paid his 500 l. I acquainted the Earl with it, and said, if he could prevail upon him, I thought it would be easy to get 50 l. apiece of the other Masters.

Masters. By the Earl's Order, I told Mr. *Lightboun*; but he refusing to pay his 500 *l.* the Proposal of 50 *l.* apiece drop'd. I acquainted the Earl of it, and Mr. *Lockman*; who said, he was undone; Mrs. *Chitty* would not marry him; the Prince would not protect him; his Creditors would throw him into Gaol, where he must rot. He was under that Agony, that I apprehended he would do himself a Mischief. He came to me again, and told me, the Earl wanted to speak with me immediately. I went. The Earl told me how he was teaz'd by *Lockman*; and I told him, I was afraid of the Consequence of his Despair. The Earl order'd me to pay him the 1000 *l.* On the 30th of *July* I paid it.

Serj. *Prob.* If he knows of any other Money Page 206. demanded by *Lockman* after this?

Cott. After this Money was agreed to be paid, I think, the same Evening, I receiv'd this Letter from him. [*Lockman's Letter read, begging Cottingham to remind his Lordship of letting Mrs. Chitty have the other 574 *l.* which he was pleased to say they should have; and without which Mrs. Chitty could not spare him the whole 1000 *l.**] I laid it before my Lord the same Evening; who said, he was surpriz'd at it, and did not know what he meant; and in short, that he could advance no more.

Lockman's Letter read.

Mr. *Strange*: Whether he had any Discourse with *Lockman*, after this Letter?

Cott. *Lockman* came to me *July* 30; and I told him, this was growing upon my Lord; and I wonder'd what he meant.

Serj. *Prob.* *Lockman* swore he never made any Demand, besides the 1000 *l.*

Mr. *Lutw.* That is to be observ'd, when the Witness is examin'd throughout.

Serj. *Prob.* Whether *Lockman* petition'd the Chancellor for this Money?

Cott. I believe not.

Serj. *Prob.* Or Mrs. *Chitty*?

Cott. Yes, before the Payment of the 1000 *l.*

Mr. *Lutw.* Whether there was not a General Meeting of the Masters, before my Lord order'd him to pay *Lockman* the 1000 l. And was it not after that Meeting, when it was propos'd to Mr. *Lightboun* to pay his 500 l. and the others 50 l. apiece?

Cott. Yes.

Mr. *Plumm.* If Mr. *Cottingham* had any Orders to convene the Masters?

Cott. The first Order I had to convene the Masters, was the *Monday* before Payment of the 1000 l. Mr. *Edwards* was then at my Lord's; and my Lord order'd me to speak to him to convene the Masters. They were conven'd, and came to my Lord's; but that was after the Money was order'd to be paid.

Mr. *Lutw.* I desire Mr. *Cottingham* may tell us, whether that is his Hand. [*Shewing him Mrs. Chitty's Petition*].

Cott. This is my Hand.

Mr. *Lutw.* Do you remember this Petition being presented?

Cott. This Petition came to my Hands. It is Mrs. *Chitty's* Petition to my Lord for 1000 l.

Mr. *Lutw.* What is the Answer writ upon the Back?

Cott. *His Lordship can do nothing in it at present.*

Dr. *Sayer*: Whether he knows of any Meeting of the Masters; and what was done?

Cott. There was a Meeting; but I was not present.

Earl of *Maccl.* What Day?

Cott. I can't be positive. It was between the Order and the Payment of the Money.

Mr. *Plumm.* Whether Mr. *Edwards* was not by, when he acquainted the Earl with that Demand and Proposal?

Cott. No; Mr. *Edwards* was in the House, but my Lord did not see him.

Mr. *Elphinston* call'd.

Mr. *Strange*: What he knows of *Lockman's* Application for this 1000 l.

Elph. Before he receiv'd the 1000 *l.* he told me often, that he had compounded his Debts; and if he had not the Money by such a certain Day, it would break his Match with Mrs. *Chitty*, and he should be undone. I heard the Earl declare to him, that he had order'd *Cottingham* to pay him the 1000 *l.* in Compassion to his Circumstances: And *Lockman*, with Abundance of Joy told me, how much he was obliged to the Noble Earl; and declar'd, he would rather have given 2 or 300 *l.* than have been examin'd.

Serj. Prob. Whether he own'd the Money was paid out of the Earl's own Pocket?

Elph. Yes; many a Time, and with great Respect.

Then Serjeant *Probyn* proceeded to the 17th Article, which charges the Earl with making Orders on Mr. *Edwards*, without Regard to the Proportion to which the respective Suitors were entitled; whereby several of them lost their Share of *Dormer's* Effects.

Serj. Probyn opens the Defence against the 17th Article.

The Crime here suppos'd is denied by the Earl; who was under a full Persuasion the Effects would come in in Time to make full Payment; and the only Reason why they were not paid in an Average, was because none of the Suitors applied to him for that Purpose.

Mr. Comm. Serj. The Earl and Mr. *Edwards* were both persuaded, there would be sufficient to pay every one; and besides he made but this one Order in *Chitty's* Case. It was no Fault under these Apprehensions, to make such an Order.

Mr. Robins: In the Close of the 16th Article, there is a Declaration suppos'd to be made by the Earl. I was then in Court; and I apprehend that what he said was ———

Mr. Plumm. If the Gentleman speaks as Counsel, he stands in a proper Place; but if he comes as an Evidence, he must come to the Bar, and be sworn.

A Counsellor giving Evidence, but must be sworn at the Bar.

Lords: Ay, ay!

Dr. Sayer: The Gentleman is ready to be sworn, if they insist upon it.

Mr. Comm. Serj. We hope the Gentlemen will not put this Difficulty upon him, of taking an Oath in a Cause wherein he is Counsel.

Mr. Plumm. I insist upon it ; because then I shall have the Liberty of asking some Questions which I have not now.

Serj. Prob. We submit it upon the Evidence already given, that all proper Measures were taken.

Mr. Comm. Serj.
opens the De-
fence against
the 18th Arti-
cle.

Then *Mr. Common Serjeant* proceeded to open the 18th Article, in Substance as follows.

The Charge is, that though the Earl knew the Masters did traffick with the Suitors Effects, and Proposals were made to him to remedy it, he corruptly neglected to inquire into it, encourag'd them to traffick, and took no Care to prevent it.

The Proof of this depends entirely upon the Testimony of *Mr. Lightboun*, *Mr. Holford* and *Mr. Kynaston* ; but there is no Evidence that the Earl encourag'd that Traffick ; but the quite contrary appears from *Mr. Lightboun's* Evidence.

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It is not Remisness or Negligence that the Earl stands here accused of, but Fraud and Corruption. But no Evidence has been offer'd to that Purpose.

It appears, by *Mr. Lightboun*, that the Earl was very desirous of having these Matters regulated, was mightily pleas'd with his Proposals, and gave him due Encouragement ; and the Manner of his pressing for the Masters Accounts, was in Order to enable him to judge of and regulate these Matters.

Several Grievances were represented to the Earl : And it was thought necessary to take them all into Consideration together, that the Regulation might be entire ; and *Mr. Lightboun* and *Mr. Holford* were both of that Opinion.

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From their Evidence, 'tis plain, that even from the Year 1721, here has been an Intention of regulating these Offices ; that several Steps have been taken to bring it to Effect : Your Lordships perceive the many Difficulties interpos'd, and will find other Reasons for the Earl's not having actually made these Regulations, very different from the distant View of any unjust Gain.

We

We shall not trouble you with Evidence upon this Article, but submit it upon what has been already offer'd.

Then Mr. *Robins* proceeded in Answer to the 19th Article, in Substance as follows.

They have endeavour'd to represent the Earl as designing to impose upon his Majesty for skreening the Masters from a Parliamentary Enquiry, and to keep up the Price of their Offices: But no Evidence is given to prove any such Design.

Mr. *Robins* opens the Defence against the 19th Article.

When his Majesty order'd the Masters Accounts to be laid before the Committee, the Earl order'd them immediately to set about it: And when some of them objected, that 'twas impossible to have them ready by the Time expected, he order'd them to be got ready in the best Manner they could.

Not one of them insinuated that they were not able to make good their Balance; only that some of them had it not all ready immediately. No Wonder therefore that the Earl did not particularly ask them, whether they were able to make it good.

Mr. *Lovibond* swears, not only himself was ready to produce his own Balance, but he thought all the rest were so too. Page 211.

Is it then to be wonder'd at, that his Lordship should advise them what Form of Words to express their Meaning by? And as he approv'd of Mr. *Holford's* Form, could it be a Crime to advise the rest to use the same?

Mr. *Comm. Serj.* We shall only call Mr. *Holford* on this Article.

Mr. *Holford* and Mr. *Cottingham* call'd again.

Mr. *Holford* examin'd again.

Serj. *Prob.* What Time the Masters had the Letter, to bring in their Accounts? Mr. *Holford* was desir'd to bring it with him. Page 212.

Holf. I have it not. Mr. *Kynaston* hath it; but not here.

Serj. *Prob.* Your Lordships will give us Leave to examine Mr. *Cottingham*.

Cott. There was an Order made Nov. 3. last, of which my Clerk made a Copy. I can't say, I

And Mr. *Cottingham*

examin'd

examin'd it. The Order is for the several Masters forthwith to deliver a perfect Account of the Money in their Hands ; distinguishing the Parties, the Date , the Sums receiv'd and paid, the Securities, &c. Sign'd MACCLESFIELD C.

Mr. Comm. Serj. This Order is much the same with the Directions before given ; but there seems good Reason why they did not comply punctually with it.

Mr. Plumm. Whether the Masters have not given in some Account, notwithstanding the Difficulty of the Method ?

Cott. Yes.

Earl of Maccl. Mr. *Holford* will inform your Lordships of this.

Serj. Prob. Whether the Masters were able to make up the Accounts pursuant to that Order ?

Holf. I did say, I thought it an impracticable Thing. My Lord said, that must be no Objection to the Bringing in the Accounts ; if we could not do it as well as he wish'd, we should do it as well as we could.

Mr. Plumm. How long was it before the Accounts came in ?

Holf. Three or four Days, or a Week.

Mr. Plumm. Compleat and right ?

Holf. There were some small Mistakes, which were rectified afterwards.

Earl of Maccl. Whether after this Account brought in, and the Balance made upon every Cause, they have been since call'd upon to make up the Account according to the first Instructions ?

Holf. We have not been requir'd to pursue the former Instructions.

Mr. Comm. Serj. We shall now call Witnesses to establish the Reputation of Mr. *Cottingham*.

Mr. Goldesborough sworn.

Serj. Prob. How long he hath been acquainted with Mr. *Cottingham*, and his Character ?

Gold. Upwards of twenty Years. All the Time he was a Solicitor, he had a good Character for Integrity and Fidelity, as any I ever knew : And so he had when Secretary to the Lord Chancellor.

Mr.

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Mr. Goldesborough examin'd to Mr. Cottingham's Character.

Mr. Price sworn, and asked the same.

And Mr. Price.

Price : I have known him upwards of twenty Years. I never knew any Body say any Thing amiss of him. I know no Man has behav'd better. If you ask a hundred People, ninety of them (I believe) will give him rather a greater Character; and the rest can't justly charge him with any Thing that is ill.

Mr. Hickman sworn, and asked the same.

And Mr. Hick-

Hickm. I have known him thirty Years. He was a diligent and faithful Clerk; and hath had a very good Character ever since; and I never heard any Thing to the contrary.

man.

Mr. Blithman sworn, and asked the same.

And Mr. Blith-

Blithm. I have been intimate with Mr. Cottingham above twenty Years. He had the Character of an honest fair Man among the Practisers in general: And since his being Secretary, he was observ'd to discharge that Office with great Justice, Dispatch and Civility. In general, I took him for a very honest Man, and he was always so reputed.

man.

Serj. Prob. We might apply to some of the Managers themselves if proper. But there is no Necessity of more on this Head. But since the Earl hath been represented as a Person full of Corruption, he is oblig'd to make known, what was injoin'd to be a Secret; and to shew, that as he hath receiv'd great Bounties from his Majesty, so he hath been liberal in sharing them with those who wanted his Relief.

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Mr. Comm. Serj. We beg Leave to mention a few of the many Instances on this Head.

Mr. Oaker call'd.

Mr. Oaker
examin'd.

Serj. Prob. How long he hath been employ'd under the Earl?

Oak. All the Time he had the Great Seal?

Serj. Prob. How far he hath been privy to any charitable Actions he hath done?

Oak. His Lordship always did these Actions privately, and with his own Hands, if he could conveniently: But I endeavour'd to inform myself from the Persons themselves. The first that I re-
member

member was Mr. *Brown*, Author of several Practical Law Books. His Lordship allowed him 24 s. a Month, besides Cloaths and Pocket-Money, some Years before I acted under him. I paid it him near seven Years, till *Christmas* last, when he died above 102 Years of Age. His Lordship sent him a Surgeon and Apothecary ; and paid them, and the Expence of his Funeral ; and the Whole, within my Knowledge, was about 120 l. Afterwards two Clergymen were recommended for a Living ; and my Lord could not soon determine which to give it to. One of them, Mr. *Vigours*, then a poor Curate, complain'd, that he could not attend longer in Town, nor had Money to carry him home. My Lord gave him a Guinea, and bid him go home, till he had determin'd. A while after he came again, and said, that on the Report that his Lordship would give him a Living, he was turn'd out of his Curacy, and order'd to quit the Parish, but had not Money to remove his Family. My Lord gave him twenty Guineas (as the Clergyman himself told me) in a Paper. Soon after, my Lord gave him a Living (near *Sittingbourne* in *Kent* ;) and as he was removing his Family, they were taken ill of the Measles : Upon which his Lordship gave him twenty Guineas more, as he told me ; and I believe my Lord hath given him several Times since. One, that was a converted *Jew*, hath had of my Lord 70 or 80 l. One *Thwaites*, a Quaker, hath had great Assistance : I paid him 60 l. at once by my Lord's Order. One *Wickham*, a Halfpay Officer in the Navy, was in the *Marshalsea* for about 30 l. His Lordship said, he had known his Father, and for his Sake would clear him, if it came to forty Guineas : He paid the Money, and gave him Cloaths to appear in the World again ; which came to above 40 l. in the Whole. Another poor Clergyman my Lord gave a Living to, who was lame, and came up to the Cold Bath : He happen'd to be arrested for an old Demand of 36 l. My Lord gave his Wife Money for present Subsistence, and order'd me to have the whole Affair made up ; and the whole Debt

Debt and Costs were paid out of my Lord's own Pocket. It would be endless to mention others of the same Kind. A poor Gentleman at *Bath* had not Money to carry him over to *Ireland*, where he had a Place given him. He only beg'd 40 s. But my Lord order'd him five Guineas: Soon after he wrote that he and his Family were ill, and wanted the same Supply; and then my Lord order'd me to remit him ten Guineas more——

Hardly a Week pass'd without some Instance of this Kind. When Clergymen were admitted to their Livings, my Lord frequently gave Orders to remit the Fees of his own Officers, paid the Fees of the Patent-Officers and Stamps, and gave them Money besides. Mr. *Higgs* was greatly indebted and in Prison. His Lordship discharg'd him, to the Value of about 90 l.

Dr. *Sayer*: In what Manner were these Things done?

Oak. As they fell in his Way, without letting them be seen or known: So that where I did not apply to him myself, I never knew it but by Accident; and he generally gave more than was asked, to set them entirely free, and do them a full Service.

Mr. *Hunt*, a Clergyman, sworn.

Mr. *Hunt* examin'd.

Serj. *Prob*. What charitable Acts he hath known done by the Earl?

Hunt: About *Whitsuntide* 1722, my Lord asking Mr. *Thornbury*, Vicar of *Thame*, what Persons he knew in *Oxford* inclinable to be studious? He kindly mention'd me as one. His Lordship sent for me to dine with him the next Day; and having kept me several Days with him, dismissed me with a Present of twenty Guineas, telling me, he design'd me a Present now and then, till he could do something else for me. About *Christmas* after, I waited on him again, and was dismiss'd with another twenty Guineas, and Assurances of Favour. About this Time Mr. *Gagnier*, having been ill us'd in *Oxford* for a Poem upon the Princess, his Lordship sent him twenty Guineas by me. I waited on him a third Time about *Michaelmas*

mas 1723, and receiv'd the same Present; and about *Easter* 1724, the same again. I have also had other smaller Presents from his Lordship: And the last Time, he sent by me fifteen Guineas to Mr. *Hutchinson*, and fifteen more to Mr. *Greenway*. So that in two Years I receiv'd of his Lordship's Bounty, for myself and Acquaintance, 136 Guineas, upon no other Account but to encourage us in our Studies. They told me, they had receiv'd the like before, as an annual Charity; and we all look'd upon our Benefactions as to be continued.

And Mr. *Smithys*.

Mr. Smithys, a Clergyman, sworn, and asked the like Question, gives a particular Account to this Effect.

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That in 1721, my Lord's Chaplain sent him an Offer of the Mastership of an Hospital, then vacant in *Colchester*, in the Chancellor's Disposal, to which a Cure of Souls was annex'd, which had no other Provision; and had been taken no Care of Time out of Mind.

That my Lord oblig'd him to a particular Care of the Parish; and understanding, that the Church was unfit for Divine Service, and the People so extremely poor, as to be incapable of contributing any Thing towards it, his Lordship order'd it to be repair'd, and paid the Workmens Bills, amounting to 52 *l.* 6 *s.* 11 *d.* ½; tho' he hath no Relation to the Place, nor any particular Concern for any of the People.

Mr. Plumm. If my Lord thinks it decent to give this Evidence, we don't oppose it.

Dr. Sayer: My Lord's Charities have been to fit out Clergymen for Parishes, and to provide them Churches.

And Mr. *J. Meyer*.

Mr. John Meyer, sworn, deposed,

That he was a *Jew* formerly, and after his Conversion, reduced to great Extremities: But being recommended to my Lord, he gave him fifty Guineas. That he was set up in a Way of living, in *St. Katharine's*, but was burnt out there, and had a dangerous Sickness: Upon which his Lordship sent him twenty Guineas more. And that

that his Lordship sent another twenty Guineas to the Treasurer of the Society for propagating the Gospel.

Mr. *Edward Sanders*, a Clergyman, sworn, deposed,

And Mr. *Sanders*.

That in 1713, through my Lord's Interest, he was admitted into the *Charter-house*, and educated there eight Years and an half; all which Time his Lordship furnished him with Books: That he gave him forty Guineas at his going to *Cambridge*; and 60 *l.* after that; and forty Guineas more at his going into Orders.

Mr. *Thornbury*, a Clergyman, sworn, deposed,

And Mr. *Thornbury*.

That in 1721, my Lord sent for him to *London*, telling him, he had some Livings in his Disposal, of which he should have his Choice; and that if he had a Mind to see them, his Lordship would be at the Expence of his Journey: That soon after he gave him a Presentation to *Ninehead* in *Somersetshire*, discharged the whole Fees himself, and made him a Present of a hundred Guineas besides.

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Then Mr. *Thomas Withers*, and Mr. *Henshaw* were call'd, but not appearing immediately.

Serj. *Prob.* I'm told, here is a Reverend Prelate, who will willingly stand up in his Place, and give an Account of what he knows.

Upon which the Bishop of Oxford stood up, and declar'd, in Substance;

And the Bishop of Oxford.

That the Earl desir'd him to recommend a Number of young Men, who might be proper Objects of his Favour, and like to make a considerable Progress in any Branch of Learning; declaring, that he was willing to bestow a considerable annual Stipend (of 4 or 500 *l.*) to encourage them in their Studies, without any Regard to Party, but merely for promoting of Learning. That he did recommend several; and did not doubt but that every one that was thought deserving had a considerable Allowance.

Mr. *Common Serj.* We have now gone through our Evidence. The Foundation of this whole Complaint is, his Acceptance of Presents or Gratuities

Mr. *Comm. Serj.* sums up the Defence.

tuities on the Disposal of Places. We have admitted the Facts; but without the Circumstances charg'd: And we hope it was no ways illegal to act as the Earl has done upon those Occasions. We hope the Evidence hath made it out, that he hath the constant Usage of his Predecessors, and other great Persons, to countenance it.

The rest of the Articles are only Aggravations of this Charge of taking Money, and will stand and fall with it.

The Source of all is suppos'd to be Avarice. But the Evidence just now laid before your Lordships, shews a Mind totally inconsistent with it.

There are some Occasions, (and surely this is one) that will justify the most modest Man in publishing his own good Deeds.

The Instances produc'd, are not of pompous Charities; nor a few only: But such as have flow'd in a continual Strain, and can be owing to nothing, but a constant habitual Benevolence to Mankind. And can such a Temper be consistent with insatiable Avarice, base Corruption and merciless Cruelty, in spoiling and oppressing *Widows, Orphans, and Lunatics*, under his Guardianship and Protection?

We hope, at least, that not only the receiv'd Notion of our Law, of presuming always in Favour of Innocence; but this his Benignity of Temper, will determine your Lordships, never to intend any Thing harsh, which will admit of a milder Construction.

Should your Lordships think (which we hope there is no Ground for) that the Earl has fallen into any Mistakes: Yet, when his Majesty, your Lordships and the Commons have extended their Clemency to those Masters, who were the immediate Actors of the Evils complain'd of, we hope the Earl would not be the only object, on which your Goodness did not shine. We rather hope, your Lordships will consider his Misfortunes: And when you look upon the Eminency from whence he is fallen, and view him at your Bar, scourg'd with the severest Stripes of the Tongue, these
Circum-

Circumstances will raise that generous Tendernefs, which always dwells in noble Breasts: A Tendernefs no Ways inconsistent with your Justice, to which the Earl chearfully submits; and that, in Imitation of the unerring Judge of all, you will in Judgment remember Mercy.

Mr. Onslow: I would not interrupt the Gentleman, before he had ended. But an Incident has happen'd, that the Managers are oblig'd to take Notice of. The Right Reverend Prelate is not in the least suspected as to his Veracity: But in Judicial Proceedings, the Witnesses of all Sorts are to be examin'd on Oath.

Serj. Peng. If it is insisted on, that what the Reverend Prelate says should be taken as Evidence, according to the Rule, he must give his Evidence on Oath.

Lord Lechm. No Doubt but the Reverend Prelate ought to be sworn. It was not taken Notice of. *No Evidence but upon Oath.*

Bishop of Oxf. If the Managers insist upon it, and your Lordships direct it, I'm willing. I submit, whether you will see how the Precedents stand.

Lord Lechm. If it be insisted on to look into the Journals, the Parties must withdraw. *All the Parties to withdraw,*

Thereupon it was wav'd, and the Bishop sworn; and whose Evidence was the same in Substance, as before. *while the Lords search for Precedents.*

Mr. Robins: The Commons have faithfully discharged their Part, by omitting no Circumstance to aggravate the Crimes they have thought fit to charge. *Mr Robins proceeds to sum up the Defence.*

But whether, after all, the Mistakes, the Inadvertencies, the Example of others, and the Frailties of human Nature itself, are not the Sum total of all this pompous Trial, will remain a Question.

Every Step the Earl took for the Benefit of the Suitors, was what he thought of best: And if better have been since found out, it only proves him not to have been infallible; which surely is no Crime. *Page 220.*

And if the Actions of his private Life, his Justice, Piety and Charity, be allow'd to cast any Light on his publick Conduct, those who are acquainted with his Innocence in the one, will never think him criminal in the other.

Mr. *Strange*
concludes it.

Mr. *Strange*: Your Lordships did, four Days successively, sit to hear this noble Earl arraign'd, in a Manner from which his Relation to your Lordships should have been a sufficient Protection; and without which the Managers might very well have discharg'd their Duty to the Commons.

But whatever Resentment this Treatment of one of your own Body might raise in your Lordships, I confess I heard it with Pleasure; as it was an Acknowledgment, that Art and Liberty were necessary in aggravating the Charge.

The Charge in general is, either doing what his Predecessors did, or not doing what it is not pretended they ever did.

If the Statute of *Edw. VI.* be taken as a Restraint upon the accepting Presents for Offices, your Lordships can't go out of that Statute to punish the Earl.

The Act puts the case of accepting Money for an Office, and says the Consequence shall be the Loss of Nomination. There are no Words declaring that Offices were not saleable by Law, or that they shall not be saleable for the future: But, if there were, the Statute, and that only, must be the Guide in ascertaining the Punishment.

The Articles have bestow'd many Epithets upon this Action; such as *illegally, corruptly, extorsively, &c.* But you will not find them in this Act.

Page 221.

And, as to its being an Offence at Common Law, there are three Proviso's in the Act, which speak the contrary. The first is that, which confirms all Bargains till a future Day. The next declares what Offices the Act shall not extend to. And the third takes Notice, that by Law the
Judges

Judges might dispose of Offices, and leaves them to the full Liberty they had before.

And if we stand clear as to the selling of Offices, then no Acts or Omissions towards raising the Price (if prov'd) will make the Earl criminal.

Your Lordships were told, in a very moving Manner, of the Cries of Widows and Orphans. But we have heard none——— Unless such as we have prov'd were not *against* him as an Oppressor, but to him as a Reliever.

Then the Earl himself mov'd for the Liberty to lay some Observations on the Evidence, before their Lordships: But, in Consideration of his Fatigue, desir'd Time for the doing it, till Monday.

Then the Managers and Counsel withdrew, and the House adjourn'd to Monday.

THE EIGHTH DAY. Monday, May 17.

Eighth Day.

The Lords being seated, and Proclamations made as before, Lord Chief Justice King signified to the Earl's Counsel, that they might proceed.

Then Mr. Serj. Probyn, after an Apology for some Omission in the Evidence before given, desired Leave to offer some further Evidence, relating to several Charities given by the noble Earl, and what the Funds were out of which these Charities arose; that the real Estate which this noble Earl hath purchased, does not amount to more than 3000*l.* a Year, and that his personal Estate scarce exceeds 2000*l.* When we have shewn this, it will appear, the Earl hath been more charitable, than according to his Circumstances he could afford. There is another Thing I beg Leave to take Notice of, to obviate an Objection I am apprehensive we shall hear of from the other Side; and that is the Box-Money; we shall shew that tho' it antiently was considerable, yet of late it hath not amounted to more than 172*l.* a Year; and that the Earl apply'd it in the same Manner as his Predecessors did.

Page 222.

Serj. *Peng.* It is a new Method of Practice, after the Conclusion of the Counsel upon the whole Evidence, to say they have more Evidence to some of the Facts. I don't know any Thing of that Nature ever allowed, especially after the Examination closed, and an Adjournment for a Day or two. Besides, as to that Part relating to the Earl's Estate and Circumstances, there is nothing in the Articles leading thereto. Therefore we submit it, whether they shall be permitted to go in to this Sort of Evidence, or into any farther Examination?

Mr. *Lutw.* We think it is of great Consequence, when an Evidence hath been so full, and with so great Patience heard to every particular Article; when that Evidence hath been summed up, and enforced by Counsel; we think there is no Precedent in any Court of Justice, where new Witnesses have, in such a Case, been permitted to be examined.

As to the other Matter about this noble Lord's Estate, that is not insisted upon by any Evidence that we have given; and I submit it whether it is proper, or any ways conducive in this Case, to any Thing that is material for your Lordships Judgment; for this Reason, because if it was material, it is impossible for us to know the Truth of it.

Mr. *Plumm.* We did not lay to the Charge of this Earl, that he was possessed of a great Estate; we have only laid to his Charge, what he hath unjustly possessed; we have only charged him with Matters of Fact, which we made out; and therefore hope your Lordships will oblige him to answer that, and not go to another Thing we have not charged.

Serj. *Prob.* We apprehend it is frequently practised, that where Counsel omitted material Evidence, even after summing up, the constant Indulgence of the Courts below lets them go into Evidence to supply that Omission. Our Witnesses are but two or three.

Dr. Sayer : What we undertake to prove, is the Circumstances of his Estate; when it shall appear that his Fortune is so much less than the World might have imagined it to be, and when at the same Time we shew his Generosity, and that by Means thereof his Estate was much lessened.

I would take Notice of the other Matter, with Regard to the Evidence of the Charity : It is only to explain and prevent a Mistake, lest it should be imagined that these Charities were out of the Box-Money. We submit, whether your Lordships will not indulge us so far, as to produce a Witness or two to this Matter.

Mr. Common Serj. We do not ask this as a Matter of Right, but a Matter of Indulgence : Such was hardly ever deny'd; and we hope your Lordships will not deny it upon this Occasion.

Earl of Maccl. There is no Instance that where Counsel hath been summing up the Evidence, and, before the other Side have replied, an Omission hath been discovered, that that Omission hath not been allowed to be supply'd.

I appeal to my Lords the Judges, whether they have ever known this Piece of Indulgence deny'd, upon any Trial whatsoever, in the Courts below? Had it been calling fresh Evidence to any Matter that hath been examined to before, there might be some Grounds for an Objection of this Kind; but there hath yet been no Witnesses examined as to the Box-Money, or my real or personal Estate; and yet these two Things are material, and may greatly turn to my Prejudice, if I have not the Liberty of producing this Evidence in Relation to them. Wherefore I humbly beg your Lordships Directions thereupon.

Ordered to withdraw, and being afterwards Page 224, *called again,* Lord Chief Justice *King* signified to the Earl's Counsel, that it is the Opinion of their Lordships, that the Earl be not now permitted to give Evidence, either with Respect to the further Account of his Charity, or the Value of his real or personal Estate.

Then the Earl of *Macclesfield* after setting out the Fatigue he had already undergone, and that he had not quite prepar'd his Defence, pray'd the Lords to indulge him till *Wednesday*; and hoped the Commons would not be against it.

Serj. *Peng.* We don't apprehend the Lord properly applies to us in this Instance.

All Parties were directed to withdraw, and the House adjourned till Wednesday.

Ninth Day.

THE NINTH DAY. *Wednesday, May 19.*

The Lords being seated, and Proclamations made as before, Lord Chief Justice King signified to the Earl's Counsel, that they might proceed.

Then the Earl of *Macclesfield*, after returning their Lordships Thanks for their Indulgence, proceeded in his Defence, in Substance, as follows.

Page 225.

I shall endeavour to shew your Lordships, that the several Things charg'd upon me, are either not true, or not criminal; or if your Lordships shall judge otherwise of them, yet that they were the Effects, not of Wickedness but of Mistake.

Page 226.

And none of the Matters is admitted or proved in such Manner as it is charged in the Articles.

The Oath of Office taken by the Chancellor, when he enters upon that Office, has no Relation to what is laid to my Charge: I have set it forth *verbatim* in my Answer; and no Argument has been attempted to be drawn from it.

But it was said, that I had taken an Oath upon the Statute of 12 *Rich. II.* which I had forgot, both in my Answer, and in my Conduct.

My Answer relates to what was charg'd, and my taking no Notice of any Oath upon this Statute, ought not to be imputed to Forgetfulness, but to its not being charged. It is not charged, and therefore not answer'd to.

It is insisted, I took an Oath upon the Statute 12 *Rich. II.* which extends to the Disposal of the Office of Masters in Chancery.

I know

I know it has been much doubted how this Page 227.
could be called swearing, or taking an Oath.

But I agree the Action should be considered as a solemn Undertaking in the Nature of an Oath, to observe that Statute in the Business we were then entering upon, and so it is an Engagement to proceed then to name Sheriffs according to the Direction in that Statute.

And I am persuaded, that in this Case, I have the universal Concurrence of the Judgments of others. For I do not believe that ever any Person that assisted on that Occasion, had the least Apprehension of his then taking an Oath, which related to any thing but that particular Occasion.

Hence I think my self not to have taken any Page 228.
Oath upon the Statute of 12 *Rich.* II. which any ways extends to Masters in Chancery; and I hope your Lordships will think so too.

The Subject Matter of the first Articles, as they stand in Order, and which I believe has given rise to this Prosecution, is taking Money for the Places of Masters; long practised without Blame, tho' my great Crime.

Their Business now is chiefly preparatory to the Determination of the Court upon References made to them by the Court, in order to their stating Things to the Satisfaction of the Parties; or reducing the Dispute to some few Heads, in which they differ, for the easier Determination of the Court.

And that which they are most generally employed in, is Matter of Accounts.

When he makes his Report he has only done the Drudgery of an Accomptant, compared Vouchers, heard Objections, convinc'd the Parties, as far as he could, and then stated the whole Account, so as he thinks is right, which at last has its Force, not from him, but from the Court, which confirms it, if not disputed, or examines the disputed Points, if desired.

Other Officers, whose Places are allowed to be sold, do the same Things, make Reports to state Facts on References, are Cashiers of the Money

brought in, and tax Costs, which is another Thing the Masters do.

And as to the Commission to hear Causes in Absence of the Chancellor, that makes no more Variation in the Nature of their Office, than it doth in the Clerk of Assize (expressly allowed in the Statute of *Ed. 6.* to be disposed for Money) who is constantly joined with the Judges.

To proceed to the Point of the Charge, It is founded singly, upon the *taking Money* for admitting Masters into the Office; and the *Manner* of taking it extorsively, without Reference to any Want of Qualification in the Party admitted; and therefore cannot be maintained, unless the taking Money be in all such Cases criminal, or that the Manner of taking or extorting it in these Cases make it so.

Page 229.

If a Person who is put into a very beneficial Office, such as one of these, for his Life, makes the Person who preferred him, a Present for it, either unexpected, by Way of Thanks after he is put in, or expected, which he had told him of before; I see not any Immorality either in the Giver or Taker.

I agree, that a Person taking a Present, and putting in an unfit Person, when he knew him to be so, or had just Grounds to believe him so, is criminal: Not because he has taken a Present, but because he has prejudiced the Publick knowingly.

But if a Person very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Post; where is the Crime, if I have an Advantage too; especially if Usage has in some Sort annexed that Advantage to my Office, which is taken from his?

Obj. It may be objected, that this Practice is dangerous; it is a Temptation to him that disposes of Places to make ill Officers, and to them to extort Money, in Order to get up their Money again.

Ans.

Ans. But is it therefore a Crime, where the Temptation is resisted, and a very good Officer is put in, and behaves himself well?

The Liberty of preferring Relations to Offices, is a Temptation to put in Persons unfit; and without Doubt has often prevailed. Supposing therefore it might be proper Matter of Deliberation in the Legislature, how far a Restraint should be put upon it; yet would it be a sufficient Charge of a high Crime against me, to say I *illegally* and *corruptly* put into such an Office *A. B.* my Son or Brother? I apprehend not.

Till a Restraint is laid, the Thing may be innocently done.

If a Restraint be laid, the Law will operate upon it, so far as the Restraint extends; but farther than that, and the Consequence declared to ensue thereupon, it will remain as before.

Considering this in it self, and upon the Reason of the Thing, where is the Force of the Argument? You took 5000*l.* for putting in Mr. *Elde*, or Mr. *Thurston*, a very fit Person, and an excellent Master; and therefore you are criminal, because some else at another Time may put in another Master not fit, upon his giving a Present!

If this then be not criminal in it self, how do they prove it to be so by Common Law?

The only Case, they have instanced in, is the Case of *Stockwith* and *North*, in *Moor's Rep.* 781. Page 230.

North, Sheriff of *Nottingham*, was fined because he gave the Gaolership and Bailiwick for that Year to his Servants, who sold them, and he received the Money. This was adjudged contrary to 4 *Hen. 4. cap. 5.* "Yet there note, that the Statute it self gives a Penalty certain and pecuniary, and is *malum prohibitum, non in se.*" But the Court took it, that this selling of Offices is *malum in se*, and finable.

It appears, this Prosecution was upon the Statute 4 *Hen. 4.* how came *North* to be fined, when a particular Penalty is (as it is there said) given by the Act?

But that is a gross Mistake in the Reporter. I desire the Act may be read.

The Statute of 4 Hen. 4. cap. 5. read.

There is in this Act only a *prohibitory Clause* against the Disposal of such Bailiwick; but no pecuniary or other particular Penalty of any Kind, inflicted by that Statute.

The Exactness of the Report therefore is not to be relied upon. Indeed it is a posthumous Work, uncorrected Notes taken for his own Use, and not intended to be published.

There is not one Instance that the taking Money for Offices, have been punished or condemned as criminal, at Common Law.

It is notorious, the greatest Offices have anciently been ever sold by the Kings: And that not in a clandestine Manner, but what was paid for it, hath been enter'd upon Record.

Page 231.

In the Case of *Magdalen College*, in *1 Roll's Reports* 157, Sir *Henry Hobart*, then Attorney, argues from it, as a Principle not to be contested, That if any one procure an Office to himself for 1000*l.* of the Gift of the King, the Office is not lost by the Statute of 5 & 6 *Ed. 6.* which shews the Thing not wicked, not *malum in se*, or against the Common Law; for the Prerogative cannot extend to what is so.

King's Prerogative extends not to what is against the Common Law, or *Malum in se*.

Whoever makes the Grant, or receives the Money, the King, or Subject, the Temptation under which the Officer who paid it lies to reimburse himself, is the same. And if the Temptation make the Thing criminal, it will make it so in all Instances.

The Proviso in the Statute of 5 & 6 *Ed. 6.* proves, that this is not against the Common Law, or criminal in it self.

SECT. IV. In that Statute, contains a Proviso, that this Act shall not extend to any Office whereof any Person is seized of any Estate of Inheritance.

This Proviso is founded only upon the Regard the Law-makers had to the *Property and Interest* of

of such Owner of an Office, which they would not prejudice; and therefore he is left at full Liberty to sell the Office it self, or a Deputation to it.

SECT. III. Makes void all Agreements, Bonds and Promises for Money, for any Office or Deputation. But *Sect. 6.* provides, that the Act shall not extend to Agreements, Bonds, &c. made or concluded before the 1st of *March* then next.

This supposes it the Practice at that Time, not only to give and take Money for Offices, but to make formal Contracts for that Purpose, which the Courts of Justice were to compel the Performance of.

The saving a Right of Action upon such Bonds, and making a Proviso in Favour of them, gives them such Countenance, that those that had any such, would certainly insist upon them; and the Persons that were bound would be discouraged from disputing with them, what the Legislature did not think fit to deprive them of, and would therefore pay without standing a Suit. Page 232.

SECT. VII. Provides, That this Act shall not extend or be prejudicial to the Lords Chief Justices or Judges of Assize—but that they may do in every Behalf touching any Office to be given or granted by them, as they might have done before the Making of this Act; any Thing above-mentioned to the contrary thereof in any wise notwithstanding.

This plainly implies, that at that Time, and before, it was the Practice for the two Chief Justices and Judges of Assize to take Money for the Offices in their Courts, else nothing in this Act could extend to what they usually did, or be of any Prejudice to them.

The Wording and Form of the Expression of this Proviso, I take it to be very clear, that the Words [*as they might have done before the Making of this Act*] are declaratory, that they might before the Making of this Act take Money for Offices; and because in the Case of those Offices the Danger

ger was not so great, it is still saved and preserved to them.

The Statute of 12 *Rich.* 2. relates only to such Nominations as are in Nature of Elections; that is, such where the Nomination is in several Persons.

The Persons called to name, or make Justices of the Peace, Sheriffs, or any other Officer or Minister of the King, are to be sworn, that they neither name them nor make them for any Manner of Gift or Brocage, Favour or Affection, &c.

Page 233.

The Statute of 14 *Ed.* 3. cap. 7. *Rast.* 12. fixes the Time and Place now observed.

If the Intention of this Statute were, that the Chancellor, Treasurer, &c. were to be separately sworn, as to the respective Officers under each of them severally.

Then this must have been made Part of their Oath of Office, or administer'd at the same Time with it, tho' in a distinct Oath.

But that has never been done, nor has it ever been administer'd to a single Person at that or any other Time, which is the strongest Argument possible that it is not what was then meant, or ever understood to be meant, by that Statute.

Page 234.

Although the Statute of 5 & 6 *Ed.* 6. cap. 16. has made Provision against the Sale, or Disposal of Offices for Money; yet nothing can be infer'd from thence in Support of this Prosecution.

The Preamble sets forth the End for which this Restraint was laid.

For the avoiding of Corruption which may hereafter happen to be in the Officers and Ministers in those Courts and Places, wherein there is requisite to be had the true Administration of Justice, or Services of Trust.

And to the Intent that Persons worthy, and meet to be advanced to the Place where Justice is to be administer'd, should hereafter be preferred to the same, and no other.

Here is Mention made of Corruption, but it is that which may happen in the Officers appointed;

it

it calls not the taking Money upon the Appointing them Corruption.

But the whole Provision is barely putting the Case by way of Supposition. If a Person do take Money, &c. and declaring the Consequence; which Consequence is, that the Person taking the Money, if it were for an Office, shall lose the Nomination to that Office: If for a Deputation, he shall lose his Interest in the Office; and the Person paying shall be adjudged a disabled Person to have, occupy, or enjoy the Office or Deputation. That is, as appears afterwards, he is disabled, so far as concerns himself, his Right to have it, and to continue the Taking of the Profits: But not so far as the Publick has Benefit by him; for by a Proviso for that Purpose, all Acts done by him are valid. Page 235.

The Effect of which is, that the Officer who comes in for Money holds that Office precariously, which would otherwise have been for Life, and is wholly at Mercy, if he gives the least Occasion of Complaint against him; and since he that put him in has lost the Nomination, there accrues to the King a Right to fill the Place with a better Man in Case he thinks fit.

But as there is no such Power of Nomination to the Offices now in me; but I have lost it with the Office of Chancellor, and therein have suffered a much greater Loss than that of these Nominations only; No Judgment can be given against me upon this Act.

Thus I have endeavour'd to make out, that the Receiving a Present upon these Occasions is not criminal in its self, or by the Common Law; and that there is not any Act of Parliament whatsoever, by which the same is made criminal, or subject to any Punishment or Judgment which can be prayed in this Prosecution.

All this Reasoning is greatly fortified by Usage, by my Predecessors; which Usage is expressly proved by all the Masters, who could not refuse giving Testimony; that is, all the present Masters admitted by my Predecessors, who are indemnified

demnified by the Act of this Session for that Purpose.

Page 236.

As to the Manner of taking Money in the several Articles, 5th, 6th, 7th and 8th, the Case stands thus.

Page 237.

V. There are in all, eight Articles relating to this Matter; but they have proceeded only upon four: The first of which is the 5th Article, and relates to the Money taken on Mr. *Kynaston's* Admittance.

Page 238.

Upon their own Evidence it appears, that Mr. *Kynaston* was well recommended by Mr. *Bayly*, a Person of a very good Character; that the first and only Message brought to me, with Relation to his Admittance, and the Money to be paid, was this; that he desired to be admitted on the Surrender of Mr. *Rogers*, and would make a Complement of 1500 Guineas; or, if I did not think that enough, I should please myself.

As to the Offer of 1000 l. Mr. *Cottingham*, a Witness produced by themselves, denies it.

So that Mr. *Kynaston's* Oath is directly contradicted by the Oath of Mr. *Cottingham*.

So that here is nothing but my accepting a Sum of 1500 Guineas, which was proposed to me as a voluntary Offer, when I was at the same Time told I might have more.

VI. The 6th Article, concerns Mr. *Thomas Bennet*, and the Money given by him, on Account of his being admitted Master upon Mr. *Hiccock's* Surrender.

Mr. *Cottingham* informed me of a voluntary Offer made by Mr. *Bennet* of 1500 Guineas, which I accepted. I believe he thought himself not ill used, and I being then extremely ill, he pressed to be admitted; and after great Importunity, was admitted while I was in Bed: This is what they have proved by Mr. *Cottingham*.

Mr. *Bennet* says, he offered 1000 l. to *Cottingham* at first, and tells a long Dialogue they had about it; but *Cottingham* himself, upon his Oath, denies it all.

So

So that here, at last, nothing is proved that passed with me, but the 1500 Guineas being offered to me and accepted.

VII. The 7th Article concerns the Case of Mr. *Elde*.

Mr. *Elde*, a Man of unblemished Character, of a good Estate, and not one Objection to his Fitness, is admitted, tho' he pays so very much short of what others had paid, and less than was at the same Time offered.

And of this that he paid, 3400 l. was returned to him, and only 1850 l. retained.

Mr. *Cottingham* proved, that Mr. *Elde* had told him he would give 5000 l. for the Place; that another offered 6000 l. that he had told me of it; that Mr. *Elde* after deliver'd him a Basket, which by its Weight he believed to be Money; that he brought it to me, and that Mr. *Elde* was that Day or very soon after admitted. Page 237.

VIII. The 8th Article relates to the Case of Mr. *Thurston*.

Mr. *Thurston* is likewise a Person unexceptionable; Mr. Baron *Gilbert*, now one of the Lords Commissioners for the Custody of the Great Seal, gave me an extraordinary Character of him, and that determined me in his Favour.

Upon the Whole, all that can be pretended to be in my Hands now, upon these four Articles, which the Managers have proceeded upon relating to Money received from the Masters, is but 3850 l. that is 1850 l. from Mr. *Elde*, and 2000 l. from Mr. *Thurston*; the rest having been all returned.

IX. The 9th Article relates to 100 Guineas given me by Mr. *Thomas Bennet*, upon his Disposing of his Office of Clerk of the Custodies of Lunatics to Mr. *Hamerfley*.

The Evidence is quite contrary to the Charge, and amounts to this. That *Bennet* having agreed to dispose of his Office to another, sent me a Present voluntarily of 100 Guineas upon that Occasion; and tho' I, at that Time, knew more had been given in the like Case, I was contented with that, and accepted it.

It has been proved, that one of my Predecessors, the late Lord Cowper, declared his Opinion, that he thought it his Right to have a Present.

As to the Discourse Mr. Bennet pretends to have had with Mr. Cottingham, Mr. Cottingham denies it.

And if there had been any such Discourse, it is not brought home to affect me; for there is no Pretence that I knew any Thing of it.

X. As to the 10th Article, there is no Evidence given.

Page 238.

XI. The 11th Article charges, *That I did admit several Persons to the Office of Masters, who at the Time of their Admission, were of small Substance and Ability, very unfit to be trusted with the great Sums of Money, and other Effects of the Suitors.*

They have produced three Orders made in the Court of Chancery in January and February last, whereby it appear'd that Mr. Conway, Mr. Kynaston, and Mr. Tho. Bennet, had not at that Time brought in all the Money that appeared to be in their Hands belonging to the Suitors of the Court. This is their whole Proof.

There is not the least Proof that I had any Reason to suspect their Ability, when I admitted them.

Mr. Conway had an Estate of between 5 and 600 l. per Ann.

Mr. Kynaston owns he has an Estate of 4 or 500 l. per Ann. with Timber upon it worth 2500 l. and 2 or 3000 l. in the Funds.

Thomas Bennet is the Person to swear himself worth nothing. Yet it appears by the Particular given in he had about 500 l. a Year, and he owns he had a Place for Life of 250 l. per Ann. when he was admitted. He says he was worth 20000 l. and had been sufficient still, but for the Losses in 1720.

There is in the Close of this Article another Charge, *That I did in open Court represent the Masters admitted by me, as Persons of great Fortunes, and in every Respect qualified for the Trust*
reposed

reposed in them, to the Deceit and Injury of the Suitors.

Mr. Waller proved, I declared in Court, that Page 239.
the Masters were Persons of as good Fortunes and Abilities, as any Set of Masters had ever been before them. Which is spoke of the whole Body of Masters, and not of those who were admitted by me.

But is there any Reason assigned, why I should think otherwise than I spoke.

Mr. Lightboun is examin'd, to prove, he told me, some of them were suspicious. But he does not say any such Thing. All he says is, that he took Notice to me of *Dormer's* Misfortune, and told me, he knew not how soon the like Misfortune might happen to others.

I think, he said he had not any particular Grounds for his Suspicion, because he had very good Characters of them, and therefore hoped they were all good Men.

So that here appears not any Reason, why I should believe otherwise than what Mr. Waller heard say.

XII. The 12th Article charges, That the Price of the Offices of Masters was satisfied out of the Effects of the Suitors, either by Way of Retainer of the Purchase-Money in the Hands of the Masters surrendering, or of replacing the Money disbursed for such Purchase by the succeeding Master, out of the Money and Effects of the Suitors coming to his Hands, and that he did not use or take any Measures to reform or prevent the same, either by causing Schedules to be taken of the Money and Effects deliver'd over, or appointing Persons to inspect, or supervise the Deliveries thereof, or in any other Manner.

Mr. Kynaston and Mr. Tho. Bennet, have sworn, Page 240.
that their Predecessors stop'd the Price of the Places out of the Suitors Money, which was to be deliver'd over to them: But is there any Proof that I was well informed of it? Or that I knew any Thing of it at all? Not in the least, but only upon the Oath of Mr. Tho. Bennet, who swears that in a Conversation with me, I took Notice of
an

an Article in his Accounts, deliver'd in to the Lords of the Council, wherein he mentioned 9075 *l.* in the Hands of Persons of Ability, meaning Mr. *Hiccocks* his Predecessor, and my self; and said, I was sorry for it, because it was discovering the Method of paying for their Places out of the Court-Money, which I had taken Care constantly to deny.

He says, that at the Beginning of this Discourse, I was so cautious, that I would not speak to him about returning the Money I had had, because probably he might be examined about that Conversation in another Place. And yet pretends that in the same Conversation I told him this. Was this a Time to tell him of it, when I expected he might be examined to the Conversation?

But I believe your Lordships will not give him the least Credit, in this or any Thing else that affects me. I beg Leave to remind your Lordships, that he stands contradicted as to the Transaction with Mr. *Hiccocks*, by three Witnesses.

The Method of *paying by Retainer* could only be upon Surrenders.

As for the other Method, the *Replacing the Money*, that is, as I understand it, borrowing the Money to make Payment; and then when the Effects are transferred, discharging the Debt out of them: How was that to be hinder'd? Not by *Schedules*, and seeing *the Effects deliver'd over*. The *Delivery of the Effects* is necessary to put that Method in Practice, and is far from hindering it.

Mr. *Meller* did not deliver over the Effects to Mr. *Borret* for some Time: Had they been still in his Hands, had it been the worse for the Suitors? Whatever a Master does not deliver over, he continues responsible for, and the Suitors have the same Security for them, as they had before. *Hiccocks* and *Rogers* did not deliver over the Effects, but stop'd Part for Payment: The Consequence is, that they are compelled to bring them in. Had *Schedules* been made, and the Effects deliver'd

deliver'd over, and so *Kynaston* and *Bennet* been forced to pursue the other Method, the Suitors had not had either *Hiccocks* or *Rogers* at Stake.

XIII. The 13th Article charges, *That from an Apprehension that a publick Discovery of Dormer's Deficiency might lessen the Gain I proposed to make by selling the Offices of Masters, I neglected to secure his Person or Estate, but endeavour'd to conceal it from the Suitors.* And the latter Part of the Article says, *That upon Motion made in Court (after I knew Dormer was absconded) to have the Effects of some of the Suitors transferred to another Master for better securing them, I, to delude the Suitors, said, That the Parties need not be in Haste, that Dormer was only gone to take the Air in the Country, and would return in a little Time, and all would be well.* Page 241.

It appears, that he went off in *November 1720*, that his Clerk and his Servants, by his Order, gave out, that he was only gone into the Country for a-while. But he was gone into *Holland* for fear of a Gaol. I knew nothing of it till after *Christmas*; and then all the Steps were taken that were thought most likely to get as much as possible for the Suitors. His Chambers were searched by some of the Masters, and Directions were given to stop the transferring his Effects in the publick Funds.

It is proved that I did a great deal more than they have proved to be my Duty. And what did I omit? Page 242.

Obj. I did not (say they) secure his Person.

Resp. He was in *Holland* out of my Reach. When he came into *England*, it was to deliver up all he had to the Suitors, and on Promise of Liberty.

Obj. I issued no Sequestration to seize his Estate.

Resp. The Estate was got without one, which is much better.

Obj. I did not examine him upon Interrogatories?

Resp. I order'd *Cottingham* to propose to the Masters, whether they would have one; and they

thought he would make a fair Discovery without.

XIV. The 14th Article relates to the Composition with *Wilson*, which is charged to be authorized by me, to conceal *Dormer's* Deficiency, and keep up the Prices of the Offices.

Page 243.

It is insisted upon to be *prejudicial to the Suitors*, and giving up a great Part of the Money due to them from *Wilson*, and done in a clandestine Manner, and without their Knowledge.

What Proof is there, that this Composition was prejudicial to the Suitors? A small one it is indeed.

And as small as the Sum is, it had never been got in for the Benefit of the Suitors, if this Composition had not been made.

Obj. But *Poulter* was insufficient, and the Debt from him worth nothing.

Res. As to *Poulter's* Circumstances some Persons have been called, who have proved that he was insufficient at that Time, but that his ill Circumstances were then known but to four or five of his Acquaintance; and by all others he was looked upon to be very sufficient.

But suppose he was not sufficient, how does that affect me? I left the Composition to the Management of the Masters; they made it. *Wilson* had sworn an Affidavit in Writing of his Circumstances, and that this was as much as he could pay to the Suitors; Mr. *Hiccocks* made his Report, that he was of Opinion this Composition would be for the Advantage of those to whom the Money was to be paid. And upon that I grounded the Order.

Obj. But the Suitors had no Notice to dispute it.

Rep. The Consequence of that is only, that Mr. *Edwards* being their Trustee, and *Wilson* knowing it, whatever could be done between them would not bind the Suitors; and they have the Benefit of all that has been got in upon it, and yet have a Right to enquire into the true Circumstances of *Wilson*, and to recover in Proportion with

with other Creditors, any Effects he shall appear to have unfairly concealed.

Obj. But it is said, that this was by my Direction.

Resp. The Proof is, Mr. *Edwards* spoke to me about it, and asked me, if he might compound it of himself; I thought not: But Mr. *Hiccocks* having afterwards informed him, that it was usual to do Things of that Kind upon a Report grounded on the Party's Oath, and an Order founded thereon; he proposed that Method, and I thought it might be so done. And he did it.

Obj. No Day was appointed to hear Counsel upon it.

Resp. There was no Occasion for Counsel: The Order is in direct Pursuance of the Report.

Obj. They are not filed.

Resp. That is not my Affair.

Obj. Some Lines or Words appear'd razed out, Page 244. which import that Mr. *Edwards* should be indemnified.

Resp. If he acted fairly in this Matter, he would be indemnified, tho' those Words were out; and if he did not, they ought not to be in.

In short, here is not the least Evidence, but that this Composition was made with a View to get as much as could be for the Suitors.

XV, and XVI. The principal Subjects of the 15th and 16th Articles are 4500 *l.* raised by the Masters, and 1000 *l.* by myself, towards *Dormer's* Deficiency.

Mr. *Conway* proves the Receipt he had given him by Mr. *Edwards*, for 500 *l.* voluntarily contributed by him towards Mr. *Dormer's* Deficiency; and says, that he had promised it in *February*, and paid it accordingly in *August*.

Mr. *Edwards* says, that in 1721, he received 500 *l.* apiece, from all the Masters, but Mr. *Lightboun*.

Mr. *Lightboun* says, that when Mr. *Cottingham* spoke to him of it in *February* 1720, he told him, all the Masters had agreed to it; but Mr. *Lightboun* refused: That I never spoke to him of it till *January* 1722; that then, I was far from making

king Use of my Authority, but says I left him to his own Inclination.

Obj. It is said, that the Letter which I caused to be sent in *February* 1720, to require them to give in their Accounts, was in Order to terrify them to come into a Composition; when that had its Effect, and the Money was paid, they were not obliged to bring in their Accounts.

Resp. None of the Masters have sworn, that they were in the least induced to pay the Money by the Fear of that Letter, or by the Apprehension of being forced to give in their Accounts, if they did not comply.

The first Letter was wrote the 14th of *February* 1720, your Lordships will give me Leave to read the Copy kept of it.

Letter dated Feb. 14, 1720, read.

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Second Letter dated Nov. 7, 1721, read.

Letter sent in Form of an Order, dated Nov. 3, 1724, read.

Mr. *Holford* tells your Lordships, that another Account was carried in by my Order instead of one so particular; for that an Account drawn up in that Manner, would have taken up several Months.

Page 246.

Obj. But why then did I not content my self with the shorter Accounts, and take them, at least such as were deliver'd into the Committee of Council?

Resp. As to those Accounts, I shall beg Leave to say something upon them under the 18th Article, which, I flatter myself, will give your Lordships intire Satisfaction on that Head.

Upon the 16th Article I take the Liberty to say as to the 1000*l.* paid on Mrs. *Chitty's* Account; I never expected that an Act of Humanity to Mr. *Lockman* should be made a Crime.

Mr. *Lockman* tells of his applying to me, and my saying to him at first, that it should be paid; but telling him after, that there were not sufficient of *Dormer's* Effects left. And he swears that he did not look upon that Sum to be paid out of Compassion, but only as it was due. He says it

was

was about a Fortnight before the 1000 *l.* was paid, that I told him no more would be paid; and denies that he applied for the Payment of 500 *l.* or 574 *l.* after I had promised the 1000 *l.*

It is fully proved on my Part by Mr. *Cottingham* and Mr. *Elphinston*, that this 1000 *l.* was advanced out of a generous Compassion, and not out of any By-end. And as to Mr. *Lockman's* Testimony, who denied that he apply'd for a further Sum; it has been proved under his own Hand, that he applied for 574 *l.* for Mrs. *Chitty*, on Pretence she could not otherwise spare him the whole 1000 *l.* and this after the Time appointed to receive the 1000 *l.*

Here the Earl informing the Lords, that he found himself so far spent, as not to be able to proceed at present, the House adjourned during Pleasure; and after some Time the House being resumed, the Earl went on.

Upon the whole Evidence all agree, that the Discourse at the Meeting of the Masters at my House in the latter End of *July* last; about the 1000 *l.* was soon over and ended with my saying, That I would take, or had taken, Care of it. Mr. *Lightboun* says, he is not sure which of the two Expressions I made Use of; and even Mr. *Tho. Bennet* says, that when I had said so, nothing was afterwards said of that, but of *Dormer's* Deficiency; and then came in the Discourse of the Parliament. Mr. *Holford* represents it, that after some Discourse of the 1000 *l.* I spoke of *Dormer's* Deficiency; and particularly of the Mischief, which was what Mr. *Edwards* had a little before said, that some had all, and others none; and that then I mentioned, that that might make great Clamour, and possibly occasion a Parliamentary Enquiry: Where if it were resolved that buying those Places was against the Statute of *Ed. 6.* it might affect me in the Disposal of the Places, and the Masters in the Enjoyment of their Places: He says several Things were proposed, but nothing agreed on. One Proposal was, whether if the Masters were continued

Page 247.

on the same Foot they had been, it would not be worth their while to contribute.

Mr. *Lovibond* swears, that all or the greatest Part did then agree, that if their Offices were established, as they had been for forty Years, they would make an annual Contribution towards *Dormer's* Deficiency.

So that it appears upon the Whole, that what I said was not with Intent to supply a present Purpose, but to make good the whole Deficiency; or if not all, yet to make good the Proportion of those who had had no Part of *Dormer's* Effects.

XVII. The 17th Article relates to Orders for Payment of Monies deposited with *Dormer*, which Mr. *Edwards* (as is charged) was directed by me to pay, without Regard to Proportion.

They have read four Orders made by me, and no more, three of them in one Cause; and only one of them directs the whole Money to be paid out.

The proper Answer to this Article, and the true one, is, that I acted so as I thought would be most for the Good and Benefit of the Suitors. I fully believed all along, that the Whole would be made good, to which I contributed all I could; and I acted accordingly. If I was mistaken, I hope it is no Crime.

XVIII. As to the 18th Article, three Neglects are charged upon me.

1. Not taking proper Care of the Securities lodged with the Masters.

2. Not taking Security for the Cash.

3. Not taking the Masters Accounts.

As to the *Securities* and *Cash*, what I am charged to have omitted doing, was never done before by my Predecessors, nor desired then of me by the Suitors.

Page 248.

But it was urged, that though this had not been proposed to me by the Suitors, it had been by the Masters.

And three of the Masters were called to prove this. But only two of them pretend to have spoke about it, Mr. *Lightbourn* and Mr. *Kynaston*.

Mr.

Mr. *Lightboun*'s whole Evidence, taken together, clearly proves what I set forth in my Answer, that I had in View three Things. 1. The making good *Dormer*'s Deficiency. 2. Settling the Masters in their just Rights. 3. Securing the Suitors from future Accidents.

As to making good the Deficiency: It appears, that at the Time of Mr. *Lightboun*'s Proposal, the Masters were all willing to contribute, except him. And he upon his Examination says, that if any Thing could be done to make good *Dormer*'s Deficiency, and put Things upon a secure Bottom, he would be as ready to contribute as any Body. He then gives an Account of the Proposals he made.

His first Proposals for providing for *Dormer*'s Deficiency, was, By every Master's advancing 2000 *l.* or such other Sum, as should be agreed on, out of the Cash of the Court; which being placed out at Interest, the yearly Income thereof, with the Produce of *Dormer*'s Estate, would in good Time make good the Debt. Page 249.

But I thought this both impracticable and insufficient, because it would be ordering one Man's Money to be put out at Interest, to pay another's Debt.

His next Proposal relates to the *Securities*, lodged in the Hands of the Masters, because he says, he told me, that *Dormer*'s Accident came by trafficking with *Securities*; to prevent that, he proposes the taking all Government *Securities* for the Future, in the Names of two or more Masters, (he says now) and in a third Person; but that is not mentioned in the Letter.

As to this Proposal, I started a Difficulty with Respect to the *East-India* and *South-Sea* Bonds, by Reason that they are payable to the Bearer. And his Answer was, That there was no Necessity of taking those *Securities*; such might be taken as are transferrable in the Books of the Companies.

On consulting others upon this, I found, that as to *East-India* and *South-Sea* Bonds, wholly to disallow the Taking those *Securities* would be hard.

At last I resolved to take the Securities (other than the Bonds) in the Names of two Masters, and a third Person to be named by the Parties. But still I stuck at the Bonds, and was never set right in that, till it was too late.

Upon the Whole, both from what Mr. *Kynaston* and Mr. *Lightboun* say, it is plain they were consulting their own Interest, to keep the Office free from Incumbrances; and their Interest and mine (if I could have any in View) was the same; so that if it were their Proposal, what should hinder me from agreeing to it, but that I thought it insufficient?

The third Thing charged in this Article, is, That I did not take the Masters Accounts; that is, Accounts of what Effects of the Suitors they had in their Hands.

This was proved to be done by my Lord *Cowper* at his Entrance into his Office, both the first and second Time; and it was done by another Noble Lord.

Had I taken their Accounts too, I doubt in me it would not have had the Approbation, as it had in those Noble Lords. And those Enquiries were to be pursued effectually and with Exactness; I own I had not Strength to go through them.

Nor did I think the taking Accounts from the Masters necessary, because I do still take the Liberty to say, I was fully persuaded, all the Masters were good and honest Men; and if they were not, I do not see it would be of any Use to take such Accounts.

This Article is closed with the great Deficiencies that have happen'd with Regard to the Effects of the Suitors.

But is there at last any Deficiency made out to be in these Masters, by which the Suitors are to be Sufferers?

Mr. *Thompson* has been called to prove these Deficiencies; but he has only shewn an Estimate of *Borret's* Deficiency, and that some of the present Masters had not paid in their Balance at such a Time;

a Time; and how much the further Sums they were to pay amounted to.

Mr. Conway, one of them, and whom they have themselves produced as a Witness, has sworn, that he has assigned an Estate sufficient to pay all his Deficiency.

The Order concerning Mr. Tho. Bennet, mentions his Deficiency to be only 7500 *l.* and 1575 *l.* represented by him to be in the Hands of his Predecessor and me.

The 1575 *l.* is brought into Court. And we have shewn Mr. Hiccocks, has petitioned that he may pay in 7500 *l.* which is the whole Deficiency.

Mr. Kynaston's Deficiency is represented to have been before Christmas 26,908 *l.* 11 *s.* 3 *d.* $\frac{3}{4}$.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
There is paid by me - - -	1575	00	00
There is offered to be paid by } Mr. Rogers, and will be paid }	6000	00	00
A Debt assigned from Mr. Delahay - - - - - }	20,850	00	00
In all - - -	28,425	00	00
Deficiency computed at - - -	26,908	11	3 $\frac{3}{4}$
This exceeds it in the Sum of	1516	00	00

And he has an Estate of between 4 and 500 *l.* per Ann. and Timber of the Value of 2500 *l.* to make good any Part that may not be got from Delahay's Estate.

XIX. As to the 19th Article, the two Things, Page 252. which are made the Heads of the Charge in this Article, relate to the Subscriptions of some of the Masters written under their Accounts; that they are able to make good the Balances; and their afterwards producing Cash, to make a false Shew of their Ability.

It appears, that when Mr. Holford brought in his Account pursuant to my Order, he (without my knowing any Thing of it) had wrote a Subscription at the End.

They say, I read it, and spoke of it with Approbation.

Mr.

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Mr. *Lovibond* next delivered me his, and he had wrote to the same Effect in Substance; only as to the Cash, he wrote he was ready to give Security.

Thomas Bennet had subscribed before he came, but had said nothing of the Money: He swears, that I said, I wished all would make use of the same Form as Mr. *Holford* had done.

Mr. *Kynaston* says, it was recommended to them by me to make such a Subscription as Mr. *Holford*'s. Mr. *Holford* only undertakes to shew he had it in his Power to answer the Money, &c. Mr. *Kynaston* goes farther; he says, I am ready to pay it to the Persons intitled.

Mr. *Lightboun* heard nothing spoken of the Subscription; he went away to finish his Accounts which were not compleat.

Mr. *John Bennet* was not there; but at his coming, being told what I had said to the other, he, without Scruple, subscribed, without my speaking to him.

Mr. *Edwards* says he was able to pay it.

Mr. *Lovibond* was called last; but I before gave an Account what he said.

So that of the Six Masters who made Subscriptions, I spoke only to Five.

Is there the least Evidence offered, that I knew Mr. *Kynaston* and Mr. *Thomas Bennet* were not able, or had Reason to believe or suspect it? No, on the contrary, Mr. *Lovibond* their own Witness, who is one of the Masters, and conversant among them, told your Lordships upon his Oath, that by their Conversation he believed they were able to make good their Accounts.

As for what is said of preventing a Parliamentary Enquiry.

Mr. *Thomas Bennet* represents it to be spoke in Answer to the Question, What was the meaning of bringing it before the Committee? And says my Answer was, That it would prevent a Parliamentary Enquiry.

If

If I said it, the Reason is obvious, and the Thing innocent.

As to their making a *false Shew* of Cash *pur-* Page 254.
suant to my Advice and Encouragement,

They have not offered a Word of Proof of any Thing said or done by me, or by my Order, concerning any Part of that whole Affair.

But instead of that they have given a confused uncertain Account of something, that passed between Mr. *Cottingham* and the Masters; but never have called Mr. *Cottingham* to bring it home to me, nor any way shewn that I knew any thing of it either before or after.

The only Person that they seem to fix any Fraud upon, is Mr. *Conway*; and, which appears very odd, only by his own Evidence; and yet he seems to justify himself too.

But if not, there is no Proof, nor Ground of Suspicion, that I was any way privy to it, or assisting in it, or that I had any the least Share whatsoever in it.

And therefore I am not guilty.

XX, XXI. On the 20th and 21st nothing has been offered.

My Lords, I have now gone through all the Articles, that have been *endeavoured to be supported* against me; and possibly your Lordships will think, from some Evidence given, that amassing a great Estate was never my View; and that rapacious and base Ways of getting Money are not consistent with my Way of laying it out.

The whole *Malignity* of all I am charged with, arises from that supposed Principle of my Actions; without this, though there should have been Imprudence, Indolence, too great Confidence, perhaps Credulity, or any other Defect, there has been nothing wicked.

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And, if your Lordships are satisfied of this one Thing, I apprehend the Sting of this Impeachment is taken out.

I am not conscious to my self, that it is necessary in this Case to apply to the Passions; which is a common Artifice to assist a weak Defence. If I have

have done any publick or private Good (of which last some Specimen has been laid before your Lordships) it will, I am confident, have its full Weight.

I submit my whole Life and Conduct to your Lordship's Judgment, and rely entirely upon your Justice for my Acquittal.

Mr. *Plumm*. My Lords, I am to say one Thing for Form sake. We produced a Copy of a Letter from Mr. *Lightboun* to my Lord, he hath now read the original Letter; I desire it may be deliver'd into Court.

Earl of *Maccl*. The Gentleman is perfectly in the Right of it. It is here.

Tenth Day.

THE TENTH DAY. Friday May 21, 1725.

The Lords being seated, and Proclamations made as before, Lord Chief Justice King acquainted the Managers that they might proceed.

Serj. *Pengelly* replies on the 5th, 6th, 7th, 8th, 9th, 10th, 11th Articles.

Serj. *Peng*. My Part is to reply to the Earl's Defence upon the 5th, 6th, 7th, 8th, 9th, 10th, 11th, and 12th Articles.

The general Crime charg'd in five of these Articles, is *Extortion by Colour of his Authority as Lord Chancellor*: The Offence in the other two, is *gross and wilful Negligence in his Office, to the Damage of the Suitors, but to his own Gain*.

The particular Exactions are his taking 105 l. from Mr. *Thomas Bennet*, on the Resignation of his Office of Clerk of the Custodies, to Mr. *Hamersley*: And 1500 Guineas from Mr. *Kynaston*; 1500 Guineas from Mr. *Thomas Bennet*; 5000 Guineas from Mr. *Elde*; 5000 Guineas from Mr. *Thurston*, on their respective Admissions to the Office of Masters in Chancery. And this of Mr. *Thurston* is charg'd with an Aggravation, *that the former Master, Borret, was dead insolvent, and no Care taken to secure Satisfaction to the Suitors*: As that of Mr. *Bennet*, is alledg'd to be done, when the Earl was one of the Lords Justices. From whence the Earl and his Counsel triumph upon

upon his Conduct in the Court of *King's Bench*, because the Commons have not an Article against him, with Respect to that Office. But this, tho' Page 256.
an Instance of the Commons Lenity, is no Proof of his Innocence; who declines the Examination of his Actions during his six Years Continuance as Chancellor, and flies to a Sanctuary for Indemnity. And the Success of the Commons in the Maintenance of those Articles upon which they have proceeded, leaves little Reason to imagine they would have fail'd in their Proof, if they had inquir'd into his former Life, or enter'd into the rest of the Articles.

The Earl himself insisted, that his general Oath of Office has no Relation to the Offences charg'd. But his Remembrance or Explanation is very defective. The Omission of any Part of his Duty, or the Commission of any Offence against the Duty of his Office, is a Breach of this Oath, tho' the Particulars are not enumerated in the Oath.

The Earl likewise relies upon it, that the whole Charge turns upon his corrupt Intent, which hath not been made appear. But these will be apparent from the Proof of the Facts; which if corrupt and extorsive, will manifest his Intent, as strongly as if he had declar'd it.

The main Objection is, that there is no criminal Matter in the Money-Articles; or that there is no Punishment annex'd, which your Lordships can inflict, after he is remov'd. In Answer to which I insist, that the Earl's disposing of these Places for Money in the Manner prov'd, is an Offence at Common Law, punishable by Fine and Imprisonment.

To make out this, it must be consider'd, that the King is, by his Coronation-Oath, oblig'd to provide sufficient Officers for the Execution of Justice.

And accordingly the Crown has always paid the Salaries of the Lord Chancellor, and other principal Officers of Justice: And other subordinate Ministers were maintain'd by the chief Officer,
that

that the Subject should not be expos'd to Exacti-
on under Pretence of Fees or Reward.

The antient * Law of *England* was, that none,
having any Office concerning the Administration
of Justice, should take any Fee or Reward: And
several Charters of former Kings have been made
to enforce it, as,

Stat. Westm. 1. 3 Edw. i. c. 26. 20 Edw. iii. c. 1.

Lord † *Coke*, 3 *Inst.* 146. says, the 20 *Edw. iii.*
is only a Commandment of the King; and that
there is no Record of any such Act; and yet ne-
cessary to be printed, because the fourth Chapter of
this Parliament refers to the Pains contained in it.

Yet, if it be only the King's Charter, it is a
Declaration of the Common Law at that Time:
But it is printed in old *Rastal's Statutes* (Fol. 89.)
and in all the rest.

Page 257.

20 † *Edw. iii. c. 6.* and more particularly the
Act of 11 *Hen. IV. Rot. Parl. n. 28.* it is enact-
ed, *That no Chancellor, &c. take any Manner of*
Gift or Brokage, upon Pain of treble of what
they take, and Punishment at the King's Plea-
sure, and Discharge from his Office, Service and
Council for ever, &c.

These Statutes have been alter'd by subsequent
Statutes, as to inferior Officers, and some small
Fees permitted in particular Cases: But from such
** Indulgence many Oppressions have ensued.

But the Common Law, and the Acts mention'd,
do not only remain in Force, with respect to the
Chancellor, but have been confirm'd by others.
And the *Magna Charta c. 29. Co. 2. Inst. 55, 56.*
implies this,

Nulli vendemus justitiam aut rectum.

If the Earl had, once in a Term, sitting in
Court, between his Masters, who paid for their
Places out of the Suitors Effects, repeated this

* *Stat. Westm. 1. cap. 10. A. 3 Edw. 1. Co. 2 Inst. 176, 209,*
210. Co. 3 Inst. 145, 147, 148. † *Co. 2 Inst. 74.*
176, 209, 210. † *Co. 3 Inst. 224, 225* *Co. 3 Inst. 146.*
cap. 68. Of Bribery, Extortion, &c. ** *Co. 2 Inst. 74.*
209, 210.

to the Suitors, he must have made a very inconsistent Figure!

But there is another good Act, which has been read, and proves this Practice to be an Offence at the Common Law, viz. 12 Rich. ii. *None † shall obtain Offices by Suit or for Reward.* Item, *It is accorded, that the Chancellor, &c. call'd to ordain, name, or make Justices of the Peace, Sheriffs, &c. shall be firmly sworn, that they shall not ordain, name, or make any, for Gift or Brocage, Favour or Affection.* The Act proceeds in a different Form, *Nor that none which pursueth to be in Office, shall be put in, &c.* Page 258.

The Earl endeavour'd to distinguish himself out of the entire Act, by objecting, that it only extends to such Nominations as are made by an Assembly, as in case of Sheriffs, and not to their separate Nomination of Officers, in Right of their Offices, by themselves.

This, if allow'd, will expound away the whole Act, in all the express Instances, save one. For there is but one Officer, the *Sheriff*, nominated thus in an Assembly: All the rest are ordain'd by the great Officers separately, in their own Right.

But the Words plainly mean, that every one of these Officers, who by Virtue of his Office shall be call'd (not call'd together) by Command of the Crown, or in Execution of his Office, to name or make any inferiour Officer, shall be sworn; for they never are all call'd together, unless on the Nomination of Sheriffs.

The Earl objects farther, that the Argument from this Act and the Oath will go too far; for then they are sworn not to present any *who make Suit or Application for any Office.*

But that is no Part of the Oath; and they are only sworn so far as the Statute extends it, which is to the former Part: And the Clause in the Conclusion is only directory to the great Officers, but not on the Purport of the Oath.

† Co. 1 Inst. 134. 2. Co. 3. Inst. 145, 147, 148.

The Statute takes it for granted, that the naming subordinate Officers for Gift or Brocage was unlawful at the Common Law; since it does not enact it to be an Offence, but provides an additional Constraint, by an Oath, not to commit it.

This Statute mentions Officers of many Sorts, and concludes, *or any other Officer or Minister of the King*, and therein manifestly comprehends the *Clerk of the Custodies, and the Masters in Chancery*.

This Office of *Clerk of the Custodies* appears, by the Patent, to have a very near Relation to the Office of *Escheator* (nam'd in the Act) relating to the Administration of Justice.

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And, by the Oath, and the antient Commissions, of the Masters in Chancery, 'tis evident, that their Offices relate to the Administration of Justice also.

The Stat. 13 *Edw. i.* call'd * *Westm. 2. c. 24.* proves that the King, at his own Expence, provided the *Clerks, or Masters*: And the Nomination † of them is only intrusted with the Chancellor, as representing the King, and for Relief of the Subject. So that it is a Breach of his Trust, to confer any of these Offices *for Gift or Brocage*, or to appoint insufficient Persons.

The Commissions shew, that the *Masters* were to be comprehended within the Statutes made to prevent the Sale of Offices of Justice; having been always invested with a general judicial Power.

But, if they were only ministerial, yet they concern the *Administration and Execution of Justice*, and are within the Statutes 12 *Rich. ii.* and 5 and 6 *Edw. vi.* according to the Earl's Opinion, when he endeavour'd to terrify the Masters to contribute.

It was objected, that the Stat. 12 *Rich. ii.* is a penal Law, and ought to be construed strictly. But Statutes made for the Furtherance of Justice,

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* Co. 2 Inst. 405. 407. † 13 *Edw. i.* Stat. *Westm. 2.* cap. 24. 50. Co. 2 Inst. 407. 486. Co. 1 Inst. 54. b. *John Webb's Case*, 8 Co. 48, 49. Co. 3 Inst. 82.

for the Suppression of Extortion * and Oppression, shall have a benign and favourable Interpretation.

By the Cross Examination of Mr. *Eyres*, your Lordships saw the late *supreme Officer of Justice* endeavouring to explain away, or ridicule, the most solemn Tie of Conscience and Honour: Whereby he did then shew, that his calling God to Witness, deserv'd to be as little consider'd by him, as Oaths taken by Traders at a certain Place, for their better Accommodation in carrying on a fraudulent Traffick.

This is a full Explanation of his Reserve in an equivocal Answer, where he says, *That when he took the usual Oath of Office, he took those of Allegiance and Supremacy, but no Oath of Office besides*; and insists, that it is not an *Oath of Office*, because repeated annually; or if it be, 'tis not particularly charg'd in the Articles.

The Manner of administering this Oath is most solemn and significant: And the Act enjoins him to take it *as Chancellor*.

Can this Statute be call'd *obsolete*, which is thus publicly proclaim'd every Year?

As to the Difference in the Form of administering this Oath, from the common Method, 'tis not material. For the †† *Form* is not essential to the *Oath*. Page 261.

The next Part of his Defence is a direct Justification of the Fact, that his *taking these Sums of Money is lawful*! Because, as Chancellor, he had a Right of Recommendation and Nomination; and a Man may dispose of his own Favours upon what Terms he pleases; and Officers may give Money, and yet be good Officers!

But some extraordinary † Instances were cited, to prove, that Chancellors, &c. had purchas'd their Places. But the Publisher makes an honest Reflection, which they were not pleas'd to repeat.

* *Beawfage's Case*, 10 Co. 101, 102. *Twine's Case* 3 Co. 82. *Gooch's Case* 5 Co. 60. *Booth's Case* 5 Co. 77. *Powlter's Case*, 11 Co. 34. 3 Inst. 149.

†† Co. 3 Inst. 164, 165.
† *Madox's History of the Exchequer*, 43. 743. He says, *It may seem strange*, and excuses it.

And some Instances out of the *Roman Law*, from whence it was inferr'd, that the taking these Sums was not against natural Justice. But these are of no Authority in this Kingdom.

And Mr. *Dupper* was produc'd, to prove, by his Observation, that no Office under the Great Seal ought to be granted without an *Acknowledgment* to the Chancellor. But the Office of Clerk of the Custodies belong'd to the Secretary of State to recommend: So that the Earl's Desire of Gain carried him, beyond his own Office, to raise the poor low Sum of 105 *l.* when he was one of the *Regents*, and that from an exhausted Master.

This single Exaction overturns the whole Merit rais'd by the few scatter'd Instances of Charity, which he has divulg'd.

But if the Authorities cited prove any thing, they prove too much; that the Offices of the Judges were lawfully to be bought and sold at Common Law, before the Stat 5 *Edw. VI.* which the Earl himself in his Answer did not insist upon.

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If it should be suppos'd, that the Sale of these Offices has been tolerated; yet his raising these Sums above double, will be as criminal, as if he had put the Offices to Auction.

In his Method, there can be no Distinction between a Present and a Price; for he made the *most* always of his Claim.

When it is said, a good Officer may give Money for his Place, and resist the Temptation of Extortion, it is what the Law of *England* would not trust to human Frailty.

If the Earl will produce any Instance in the Books, where such a Transaction has been mention'd, I may engage to shew him that it has been holden illegal.

The Authority * already cited is express. But the Earl objects, that the Opinion is extrajudicial, and the Court were mistaken, where they say, the Statute 4 *H. iv. c. 5.* did inflict a Penalty.

* *Stockwith and North.* Moore 781. Noy 102.

'Tis plain from the Book, that is only the Note of the Counsel or Reporter, who took the Offence to be only *malum prohibitum*: And whether the Court impos'd the Fine, by Force of the Statute, or by the Common Law, it will not weaken the Authority; because the Court expressly declar'd the *selling the Office* was *malum in se*, and *fineable*. And Lord * Coke describes these Crimes as *Offences at the Common Law*. So, in the Case of † *Smith and Mall*, and *Linley's* ‡ Case, 'tis holden, *That if any Judge or Officer takes more than the usual Fees, he is punishable at Common Law*.

The strict Definition of Extortion, is, when a Person, *colore † officii, extorquet feodum non debitum, plus quam debitum, aut ante quam debitum*. But largely, it is taken †† for any Oppression, by extort Power, or by colour or pretence of Right.

But it is urg'd, that it appears, from the Statute 5 & 6 *Edw. VI.* that the buying or selling of these Offices was lawful at Common Law, and not prohibited by the 12 *Rich. II.* and that the Statute of *Edw. VI.* only imposes a particular Penalty, by Loss of Office, or Disability. Page 263.

'Tis agreed, that the Stat. of *Edw. VI.* includes both these Offices of *Clerk of the Custodies*, and the *Masters in Chancery*.

'Tis evident, this Statute expressly calls this Way of dealing a *Corruption*. It carries the Punishment farther, but does not take away the Punishment by Fine and Imprisonment at the Common Law. And there is no Proviso exempting the Court of *Chancery*; nor any Expression to declare such Bargains to be good; but leaves them to the Common Law, and former Acts of Parliament.

* Co. 3 Inst. 146. c. 68. and 224, 225. c. 101. † 2 Roll's Rep. 263. ‡ Hutt. 70. † Hutt. 52, 53. Co. 3 Inst. 149, 150. *Beaufage's Case*, 10 Co. 101, 102. *Dive and Maningh*. Plowd. 68. a. Co. 1 Inst. 168. b. *Sir J. Bingley's Case*, Poph. 149. *Rex and Gover*. 1 Sid. 91. †† Co. 1 Inst. 368. b.

So that, tho' the Earl (being dismiss'd) is not liable to the Loss of his Office, he is still liable to the Punishment at Common Law, and subject to your Lordships just Sentence. For where † a Statute imposes a new Penalty, for a Matter which was an Offence at Common Law, the Prosecutor may pursue either Remedy; tho' where the Statute creates the Offence, that Remedy must be taken which the Statute gives.

As to the *Money-Articles*, 'tis agreed by all the Witnesses, that the whole Transaction was finish'd and the Money actually paid into the Earl's own Hand (except Mr. *Thurston's* 5000 Guineas) before the Resignation and Admission.

But, as to the 105 *l.* receiv'd from Mr. *Bennet*, and the 1500 Guineas each from Mr. *Kynaston* and Mr. *Bennet*, they have suggested a Contrariety in the Evidence: And, upon the Credit of the *Secretary's* Testimony, would suppose each of these Sums proceeded from the voluntary Offer of the Masters, and not insisted on. But the Nature of the Transaction, and the Circumstances of the Persons, strongly support the Credit of the Witnesses; and Mr. *Cottingham* himself has confess'd enough to maintain the Articles in Substance.

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As to the 9th *Article*, it will be difficult to believe, that Mr. *Bennet*, who had lately paid so large a Sum, borrow'd of his Brother, and who had paid no Admittance-Money for this Place to the Earl *Cowper*, and who had been inform'd that there was nothing due, should first propose a *Present*, as 'tis call'd. And *Cottingham* himself has own'd, he told Mr. *Bennet*, something was expected, and that he carried the Proposal to the Earl, and the Money from Mr. *Bennet*; after which the Earl took the whole Care of expediting the Sign Manual and the Patent.

Now a Lord Chancellor's *expecting* something, declar'd by his *Secretary* to the Party to be admitted, is a peremptory *Demand*.

Dupper acquainted your Lordships, that, upon *Cottingham's* telling him of *Bennet's* intended Surrender, he said, there ought to be an Acknowledgment

ledgment to the Great Seal; and tho' *Cottingham* at first doubted it, *Dupper* satisfied both him and the Earl, that Money might be ask'd.

This confirms Mr. *Bennet's* Evidence, that nothing was said about Money at the first Meeting, but it was introduc'd by *Cottingham* at their second Meeting; which must be after *Dupper's* Information, that Money might be expected.

The Charge is, the Earl's taking these Sums *colore officii sui*, as Chancellor, and without Right; which is *Extortion* and *Corruption*.

It will amount to the same, whether they propos'd the Sum, * or he demanded it, if something was expected by him, and he declin'd doing his Office, till it was paid: And 'tis remarkable he gave no Credit, but had it always safe, before he admitted the Officer.

It has been attempted to prove, that former Chancellors have us'd to receive Money upon Surrenders of this Office: But no legal Proof of any one Instance. *Dupper* only copied an Account which he came odly by, wherein there was an *Item* to that Effect.

Oker's Evidence turns against the Earl. For tho' there were Surrenders of this Office in Earl *Cowper's* Time, nothing was taken by him. And if Earl *Cowper* did declare, (as is suppos'd) yet that being between those two Surrenders, 'tis plain, he departed from such Pretensions, and expected nothing upon the last of them.

But this Defence, upon a suppos'd Usage is a Proof of the Article, that he did insist upon the Money as his Right.

Art. V. As to the Bargain with *Kynaston*, it appears, that he endeavour'd to obtain the Office at a lower Rate. *Kynaston* at first offer'd 1000 Guineas. *Baily* afterwards thought 1500 Pounds were agreed upon: And when *Cottingham* said 1500 Guineas were expected, *Baily* did not proceed till he had inform'd *Kynaston*; who answer'd, he must submit.

* Co. 3 Inst. 148, 149, Earl of Middlesex's Case.

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This Dispute only about *Pounds* and *Guineas* explains the Manner of these Dealings: That they were formal *Bargains*, at the *best Price* that could be got. And tho' there was no *Haggling* with the Earl himself, he had a faithful Steward, who *haggled* well for him.

Art. VI. As to *Bennet's* 1500 *Guineas*; the Manner of his first Offering 1000 *Guineas*, and *Cottingham's* saying, he hop'd he would not lower the *Price*, the Hazard of his being refus'd, and his agreeing at last, is supported from the usual Behaviour of *Cottingham*, as well as from the Probability of the Thing.

In the Earl's Defence upon these two Articles, *Mr. Goldsbrough* prov'd, that the Earl, 23 *Feb.* last, paid those two Sums into Court. But this was several Days after the Impeachment; and is a proper Example of his own Construction of a *voluntary Present*. For then he did *freely and voluntarily, and of his own Accord*, make a *Present* to the Suitors, of these two Sums, which he had, in the like *free and voluntary* Manner receiv'd from *Kynaston* and *Bennet*. But this Action shews, he was convinc'd, he had no Right to receive or detain the Money, and was afraid to keep it.

Art. VII, VIII. As to the 5000 *Guineas* each from *Elde* and *Thurston*, the Price was settled between them and *Cottingham*. And when *Mr. Elde* offer'd 5000 *l.* *Cottingham* said, *Guineas* were *handsomer*; and the particular Method of Payment shews the Rebukes of his Conscience, and Fear of a Discovery. These two Facts shew the Prevalency of his Avarice. For, in *Elde's* Case, he broke through Friendship to him, to receive his Money in a *Basket*: And in *Thurston's*, he tried to beguile his Fears, by suffering it to come to him through an unsuspected Hand.

It appears, that the Earl either knew or suspected a Loss by *Borret's* Insolvency; and it now appears at least 12000 *l.* But he left the Suitors to bear that Loss. And the returning great Part of these two Sums, after the Confusion of the Court became

became publick, are rather Decrees against himself, than any Extenuation of his Guilt.

As to his great Merit, so often repeated, that he might have had 6000 *l.* from Mr. *Lucas*, we shall call Mr. *Lucas* to prove, that it was upon this exprefs Condition, that he should be indemnified against all Deficiencies.

But the Earl's chief Defence, is rais'd from the Practice of his Predecessors. And he has prov'd 700 *l.* paid by Mr. *Lovibond*, and 800 *l.* by Mr. *Holford*, and 500 *l.* by Mr. *J. Bennet*, on their Admissions; from whence he insists, that this Practice gives him a Right to a *Present*, and it was at his own *Discretion* to declare the Sum.

But a *Present*, uncertain in the *quantum*, and depending on the Pleasure of the Receiver, differs little from a *Price*.

These two or three late Instances can't change the Common Law, or repeal the Acts of Parliament: And if he uses them as Precedents, with all their Circumstances, they turn against him. For Mr. *Holford* and Mr. *Lovibond* were, and still continue, Men of Substance; and Mr. *J. Bennet* was of Ability at that Time, tho' the Year 1720 impair'd his Estate: And they all paid the Money out of their own Estates, not out of the Suitors Money.

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So that, tho' these few Instances were not animadverted upon, they will afford no Excuse for his taking double and *treble* the Value, of Persons of small or incumber'd Estates.

Art. XI. The Circumstances of *Kynaston*, and *T. Bennet* have been prov'd, and their Deficiencies; and how unequal they were to the Trust.

Kynaston had about 50000 *l.* in his Custody, and *Bennet* near 100000 *l.*

This is a Breach of Trust in the Earl, and an Offence against the Statute 12 *Rich. II.*----- *that they make all such Officers and Ministers of the best and most lawful Men; which Words import Sufficiency of Substance, as well as Capacity.*

And the * Stat. 2 Hen. vi. c. 10. takes it for granted, that the superior Officers were before that Time under the Obligation of the Common Law, or some former Statute.

But the old Rule, *Respondeat superior*, will hold against the Earl, especially when it appears, by his own Witness, that he dispos'd of the Suitors Money without a proper Ground. And the Offence charg'd does not depend upon his Knowledge of their Insufficiency, but that he did not take proper Satisfaction of their Sufficiency.

It was properly said by one of the Earl's Counsel, that he *weigh'd* the Masters before he admitted them: But it was only for the Sake of the Price they were to pay to himself; and when he had done with 'em, he left them of very little *Weight* for the Security of the Suitors.

His false, tho' memorable, Declaration in open Court, explains his whole Scheme, when he publish'd, from the Bench, that *the present Masters were Men of as great Fortunes, as any Sett of Masters had ever been.*

The Words have been prov'd, and not contradicted.

Dormer's Deficiency had then taken Air: And the Suspicion of several of the Masters was so strong, that this Publication rais'd Astonishment in the Hearers. But there was a *Vacancy*. Mr. *Fellows* died two Days before this Declaration; and it was necessary to give the Office a Reputation. And tho' the Insufficiency of several Masters had been decently intimated to him by Mr. *Lightboun*, and the Earl himself may be presum'd to know the general Apprehension of the World; yet in this solemn Manner, he became an *Officer* to himself, to proclaim his own Market.

Art. XII. The Practice and Injury to the Suitors can hardly be more aggravated, than in the Article itself. It has been prov'd: And no Proof offer'd to contradict or extenuate the Charge.

The particular Methods of preventing the Fraud here specified, are only to shew the Practicability of some Measures to redress them. And, by his own Witnesses, it was expressly prov'd, that some of these Methods had been practised with Effect by his Predecessors. An Account of the Suitors Cash and Effects was brought to Lord Chancellor *Harcourt*, by Mr. *Holford*, as the Account of his Predecessor, before he was admitted; and he was ask'd if he would be bound by that Account, and stand charg'd with it? To which he agreed; and his Substance was sufficient to answer it.

The Cash was some Years lock'd up, in Lord Chancellor *Cowper's* Time: And the Accounts of all the Masters taken three several Times in a few Years; twice by Lord *Cowper*, and once by Lord *Harcourt*.

But the Earl of *Macclesfield*, by his own Confession is guilty of a total Neglect: And upon this Article his Answer is directly falsified. For he declares upon his *Honour* (of which he has only made a Shew or Appearance) that he was totally ignorant of this Practice; tho' 'tis prov'd to have been publickly known. It was one Inducement to *Kynaston*, and the single Temptation to *Bennet*.

But express Notice is prov'd out of his own Mouth, by Mr. *T. Bennet*; and farther, that the Earl had been us'd to prostitute his *Honour* by a Course of Denial of this Fact on former Occasions.

Mr. *Bennet*, in his Account deliver'd in to the Judges, had inserted an *Item* 9075 l. in the Hands of Persons of Ability; which included the 7500 l. paid to Mr. *Hiccocks*, and the 1575 l. to the Chancellor.

Mr. *Kynaston* also had inserted an *Item* to the same Effect.

Mr. *Bennet* soon after went to the Chancellor, who said, He was sorry he had given in his Account in this Manner: All the World would judge, that he had paid for his Office out of the Suitors Money: And what had been so much suspected would now be discover'd, which he had always taken so much Pains to deny, whenever he was ask'd

asked the Question ; wishing, he had been acquainted with Mr. Bennet's Necessities, before he had given in that Item.

The Probability of this stands confirm'd, from the Nature of the Thing, and the State of the Account which is not contradicted ; and it seems further strengthen'd by an Opinion which the Earl had entertain'd, and which he drop'd in his Defence, that *the Suitor was not the worse by this Method ; for the former Master remained still responsible.*

This seems a strong Symptom of the Earl's Knowledge of the Practice, when it had obtain'd his *Approbation.*

But the Money retain'd by Mr. *Meller* was no Part of the Price of the Office ; but other Sums which he retain'd, at the Request of the Suitors, who doubted *Borret's* Sufficiency. But suppose the former Master had died, or failed, with these Effects in his Hands, how should the Suitors have come to a legal Proof of this Transaction ?

The Importance of this Part of Mr. *Bennet's* Testimony, has given them Occasion to object to his Credit ; as having contradicted himself, and denied here upon Oath, what he had formerly declar'd.

Mr. *Holford* gave in Evidence, that Mr. *Bennet* said, *If Mr. Hiccocks would pay him back 2000*l.* he would take Care, the rest of the Money should be rais'd :* But Mr. *Bennet* did not say, *he had the Money*, tho' Mr. *Holford* believ'd he had it.

Mr. *Thurston* deposed, that Mr. *Bennet* declar'd *he would make up the rest himself ;* but afterwards told him, that *all he had in the World would not pay it.* And Mr. *Elde* swears to the same Effect.

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This Testimony does not contradict, but rather confirms *Bennet's* Evidence. For he made no Declaration of his Ability to pay the rest ; but being liable to the Suitors, he seem'd willing to get what he could from Mr. *Hiccocks*. Besides, his Discourse, at these Times, can't stand in Competition with his *Oath* ; and a Witness's Credit is not to be taken away upon an *uncertain Expression,*

sion, proved by each of the Earl's own Witnesses in different Words.

But the Commons will confirm Mr. Bennet's Testimony, by proving, that the Earl had express'd the same Concern to others.

Another Fact assists the Proof of this Article ; That the Price of the Office, and of the Admission, are comprehended in the Accounts of the Master's Deficiencies, and make the greatest Part of Bennet's Deficiency, and near a Moiety of Kyngston's.

And here the Corruption of the Earl appears with the highest Aggravations.

His extorted Profit is rais'd out of the Effects deposited in the Court, upon the Faith and Honour of the King's Administration, under the Care of the Chancellor, by whose Connivance (if not Consent) they are thus embezill'd ; and the Suitor must either sit down with the Loss, or be forced to expend his Little remaining in a tedious Process. Unnecessary Delays of Causes are the unavoidable Consequence of this Practice : And thus the Business of the Court, and the Profits of the Masters Offices, have increas'd by the Pursuit of the Parties after their own Effects.

The late Orders made since the Impeachment and Commencement of the Trial, though not yet comply'd with, have been made Use of by the Earl in his Defence ; which is a new Attempt to make a false Shew of Restitution. Though if it was a complete Return of the Principal, it would be a small Extenuation for the Prejudice done the Suitors, by their being hinder'd from the Employment of their Money.

The Earl has not ventur'd to enter into a particular Discharge of the total Deficiency assign'd by the Commons, on the Evidence of Mr. Thompson, amounting to more than 100,000 l. Nor has he given any Answer to the great Loss sustain'd by the Insolvency of Dormer and Borret.

If the Misdemeanors charged were not Crimes by the ordinary Rules of Law, in inferior Courts, as they have been made out to be ; yet they would

would be Offences of a publick Nature, committed by the highest Officer of Justice, and attended with infinite Loss to a Multitude of Suitors. And, as such, they demand the Exercise of the extraordinary Jurisdiction vested in your Judicature, by Virtue whereof your Lordships can inflict that Punishment which no other Court can impose.

When these Offences have been prov'd upon the Earl impeach'd, of what Consideration can the Earl's mistaken Charities be? Can they alter the Facts charg'd upon him? Or turn *Extortion* and *Fraud* into Liberality and Piety? Can the Merit of a few private good Works atone for the *Plunder* of the whole Body of the Suitors, upon whom this Earl has brought a Deficiency of 108,000*l.*

He depends upon the Prayers of those few, who have been the Partakers of his *Bounty*, without being Sufferers by his *Crimes*. But the Voice of the Commons for *Justice* against this *Great Offender*, not only includes the Complaints of the particular *Sufferers*, but the Accusation of an *injur'd Nation*.

Mr. Lutwyche
enforces it.

Then Mr. Lutwyche proceeded, in Substance, as follows.

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Since I was oblig'd to bear my Share in this Prosecution, I was willing to hear what would be said and proved in the impeached Lord's Defence, before I spoke freely upon the Matters in Judgment. And I may now venture to say, as he was unfortunate to bring so heavy a Charge upon himself, he has been more unfortunate in his Defence.

Upon Examination of the first Witness produced by the Commons, his Lordship made it a Question, whether he took the Oath directed by the Stat. 12 *Rich. 2.*

The Statute has been represented as *obsolete*, read in Old *French*, and not regarded, and the Oath not duly administer'd; though done in the usual Method.

If there had been any Thing not regular, it was his Duty, to put them in a right Method.

I do not know, but most of the old Oaths may, by the like Arguments, be evaded. The very
Oath

Oath of Office is, *You shall swear, &c.* And a nice Distinguisher may as well say, that he repeated nothing; and that there are not Words *de presenti*, whereby he is sworn! But where is the Defect? The Officer reads, out of the Statute, That *the Chancellor, &c. shall be sworn, &c.* And then they kiss the Book.

I don't see much Difference, between saying, *The Chancellor, &c. shall be sworn* (they being then present) and saying, *You the Chancellor, &c. shall swear, &c.*

I shall therefore have the Charity for the Noble Lord, to take it for granted, that he *was sworn* as the Statute required, and that he understood it, though it was read in Old French, and that he did not prevaricate when he did this solemn Act.

Supposing therefore the Stat. 12 Rich. 2. to be in Force, and the Oath really taken, what is the Law upon the several Facts and Circumstances prov'd against him, in Relation to his selling the Offices?

The Answer says, The Masters freely and voluntarily sent a Present. We say, particular Sums (and those very exorbitant) were insisted on, and a Bargain driven for the Offices, by Way of *Brocage*.

The Words of the Statute are general, and should extend to these Offices of Masters, above others, because they do not only concern the *Administration of Justice*; but are in some Measures *judicial*.

Lord * Coke places this Offence of selling Offices under his Chapter of *Bribery*; and instances in the *Lord Treasurer's making a Customer, &c. for Gift or Brocage*; which he says is *Bribery, by this Statute*. Which Example also proves, that the Statute is not confin'd to the Construction put upon it, only to Cases where the Chancellor, Treasurer, &c. meet together, as they do, when they nominate *Sheriffs*.

This and the other Statutes mentioned are but Declarations, and further Remedies for what was the Common Law. The Case † cited out of *Moor* takes it to be so. But there was an Objection, that *the Report of that Case says, the Statute 4 Hen. 4. cap. 5. gives a Penalty certain and pecuniary, whereas it doth not.* But the Declaration of the Court, upon which the Party was fined, was because the Offence was *malum in se*. And though the Stat. 4 *Hen. 4.* gives no Penalty; yet the Stat. 23 *Hen. 6. cap. 10.* does give a Penalty of 40*l.* in the same Case; and yet the Party was fined at the Discretion of the Court. The same Case is also reported in * *Noy*.

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The impeached Lord has advanced a dangerous Position, that the Publick has nothing to do to inquire, but whether the Officer be a good Officer. Here I presume, he was sensible, the same Argument would hold for *taking Money in a Cause before him, provided it was a good Judgment!* And therefore he says, the Difference between this Case and taking a Bribe for Judgment, is, that in the one Case, the Party has a Right to have Judgment; but in the other, no Man has a Right to his Favour, unless upon Terms. The same Argument would prove it lawful for him to take Money of every Judge that comes into *Westminster-Hall!* For what is the Publick the worse, provided he is a good Judge?

But, suppose this Matter rested only on the Stat. *Ed. 6.* it is an Offence and Misdemeanor in his Office; and he is answerable for it, before your Lordships.

If this Great Officer should be liable to no other Punishment, than an Incapacity of Nomination, the Act would have little Effect, since his own Office is during Pleasure.

The Charge in *Article 13.* is, that he endeavour'd to conceal the Deficiency in *Dormer's* Office, and neglected to secure the Suitors.

† *Moor's Rep.* 781.

* *Noy* 102.

But it is said, what Harm has happen'd by not taking the Methods propos'd ? Page 271.

Neither the Debt to the Suitors was known, nor the *Quantum* of the Effects to pay it.

The Deficiency in *Dormer's* Office was at first about 25,000 *l.* but a further Debt of about 1500 *l.* has been discover'd about a Month ago. Here is a great Deficiency conceal'd. On the other Side, his Effects, that should have gone towards Payment of that Debt, have been concealed. A Parcel of Hops worth 7 or 800 *l.* lay concealed four Years, and were not discover'd till lately : But if he had been examin'd on Interrogatories, he would probably have discover'd them at first; and they would have been worth 5 or 600 *l.* more than now, for the Benefit of the Suitors : And other Instances.

His Lordship answers, that he left it to the two senior Masters to inquire into *Dormer's* Effects.

Orders from a Chancellor, in Earnest, are always in Writing ; nor can they be enforc'd unless they are so.

Another Thing insisted on, is, that the Earl was made to believe the Masters would make good the Deficiency. But they never told him so. And he knew, this was to be undertaking for the Debt of another ; which could not by Law be obligatory, unless reduced into Writing.

Art. XIV. Is about the Composition with *Wilson*.

The Earl began his Defence with a Copy of a Judgment obtain'd by *Wilson* against *Poulter* for 18774 *l.* whereas the Debt pretended to be assign'd by *Wilson* is 22060 *l.* so that the Debt is above 3000 *l.* more than the Judgment is for.

The next Point was *Poulter's* Sufficiency ; and two or three Brokers produced to it. But they were unlucky Witnesses ; being the very Persons to whom he declar'd his Insolvency. And we could make it clear, that *Poulter* was a broken Man at that Time. Page 272.

Another Objection was, How does it appear, that a better Composition could have been made ?

It

It appear'd, on the Examination of Mr. *Edwards*, that *Wilson* own'd he had paid several others their full Debts; and 'tis notorious he kept his Shop open till lately.

It was said, by the Earl and his Counsel, that whatever the Lord Chancellor did could not bind the Suitors, they not having Notice; and therefore the Suitors might recover the Whole from *Wilson*, and Nobody was hurt.

There is something very shocking in this Excuse: That this poor ignorant Man (*Wilson*) should be made to believe, upon the Faith of a Court of Justice, that his Composition was in full Discharge of his Debt; if there was a Reverse, that it might be set aside, for Want of Notice to the Suitors! The Excuse seems to carry a greater Guilt than the Crime charg'd. This unfortunate Man was living at the Beginning of this Trial; but has since laid violent Hands on himself! I make no Reflection what might be the Occasion of it.

I mention'd, that the absolute Order for accepting this Composition, was with this Addition, *Of which give Notice forthwith*. I heard no Answer to that, but what the Earl was pleased to say, that he thought he had been charged with compelling Mr. *Edwards* to accept of a Composition without Notice to him; whereas it was done on the Petition of *Edwards*!

It was said, If it had been set down to be heard, being the Vacation-Time, *it could not have come on till the Term*.

That Lord knows, particular Petitions have been often heard in Vacation-Time. And why such a Fondness for having this done in such Haste, unless for the Purposes charged?

Something was likewise said, of the striking out of the Prayer of Indemnification; that *if it were justifiable, it needed no Order to indemnify; and if it were not justifiable, it ought not to be in*. But it looks like a Diffidence whether it was justifiable or not: And, since it was put into the Prayer of the Petition, *that Mr. Edwards might*
be

be indemnified, if the Chancellor thought it not justifiable, he ought to have let Mr. *Edwards* know it; as he ought to have let *Wilson* know the Composition would not be good without the Suitors being Parties.

Art. XV. To the 15th Article the Earl says, he call'd for the Masters Accounts with Intent to examine them, and regulate Matters; even after the 500*l.* was paid. But as to the second Letter in Nov. 1721, as Mr. *Cottingham* did not speak positively, we beg Leave to acquaint your Lordships, that it was never sent. But if it had, can any one imagine, that the Chancellor would not have pursued it, if he had really intended it? But *he had requir'd so many Particulars, in the Accounts, that it was almost impracticable to do it!* It answer'd the Design the better, that it should be difficult. But 'tis most wonderful, that tho' in four Years it could not be done; yet, when the Committee of Council call'd for the Accounts, the Earl used such Diligence, that they were ready in a Week. Page 273.

He values himself much upon this Expedition; not considering, how inconsistent it was with the Difficulties which were made an Excuse for not having it done four Years before.

It was insisted, that *Lightbourn* did not pay, and yet he brought in no Account. But nine of the Masters did pay: And it would have look'd partial to proceed against one, and not the rest; and besides there was not a Despair even of him.

It was said likewise, *the Business of the Court must have been at a Stand.*

If there had been a willing Mind, one long Vacation would have been sufficient, without any Interruption to the Business of the Court.

After all this, the Earl says, *If he had taken the Accounts, it would have signified nothing unless he went further.*

If he never begun, he could never bring any Thing to Perfection.

But after all he is forc'd to come to this Conclusion, *to go on in the same Road his Predecessors*

sors had done. Though, it has appear'd to be not the *same Road*; for his two immediate Predecessors did call for the Accounts, and had them.

Art. XVI. is grounded on the 1000 *l.* paid to *Mr. Lockman.* The Earl says, he still believes, *he did not persuade the Masters to pay it.*

The Occasion of the Meeting, and the Nature of the Thing plainly shew it. *Mr. Cottingham* went to *Mr. Lightboun,* and told him there was a present Occasion for 1000 *l.* The Masters discours'd of it, going to the Chancellor's. The Chancellor mention'd the pressing Necessity for this 1000 *l.* as a *Thing of Consequence*; saying, *he did not know what the Consequence might be: Clamours grew strong; and he did not know, but it might come to a Parliamentary Inquiry.*

To evade all this Evidence, the Earl says, *he did not persuade them to pay this 1000 l. but to pay all Dormer's Deficiencies.* But, if he was not able to persuade them to pay 1000 *l.* there was no Likelihood of prevailing on them to pay the Whole.

Another Matter insisted on was, that the Money paid to *Lockman* was out of Compassion. *Lockman* says, he took it as his *Due*; and he was in the Right. He gave an Assignment of the Order when it was paid: And certainly this can't be added to the List of his *Charities.*

I think he seems to agree in Substance to the Declaration, that *he had heard of Dormer's Deficiency, but only as publick News, &c.* A strange Declaration to come from the Bench at the End of four Years! Then he referr'd it to *Mr. Edwards* to inquire, whether there was likely to be any Loss? When he knew all *Dormer's* Money was gone, and *Edwards* had none in his Hands.

Art. XVII. Is for ordering *Dormer's* Money to be paid without Regard to Proportion. The Answer given is, that *we have produced but four Orders made by the impeach'd Lord for such Payments.* 'Tis not material, whether the Orders were made by himself, or the Court. He was warn'd of the Consequence; he took the Management

nagement to himself, and let Things run on, hoping the Money would last his Time.

'Tis objected, that there was *no fixed Fund* of Page 274. Dormer's *Effects* to settle a Rule of Proportion. This is excusing one Fault by another. Care is taken not to have an Account settled: And that made an Excuse for not settling a Proportion.

Art. XVIII. Relates to the Masters *trafficking with the Money*; which was as notorious, as that there was such a Place as *Exchange Alley*.

The Year 1720, was so fatal, that surely, if a Reformation was ever to be made, it should have been on that Occasion. One Thing propos'd was so easy to be done, that there is no Excuse it was not complied with; which is in Relation to the *Securities*. The only Answer was, that it *would not answer all the Securities*.

Art. XIX. Was founded on his Edeavours to deceive his Majesty in Council, by persuading the Masters to make false Representations of their Circumstances.

One of the Masters having concluded his Account with a Representation of his Ability, the Rest are persuaded to do the like, without asking the Truth of it. Mr. *Lovibond*, of his own Accord, could go no farther than to say, he was able to pay, *or give Security to pay*; but that was not thought sufficient by this Lord, because it would imply a Diffidence, that the Money was not forthcoming; and therefore these Words about *Security* were not to be mention'd. Others, no Ways capable, were induced to make the like Subscription.

When the Money was expected to be produc'd, *Dixon* and *Cottingham* have a Meeting with the Masters; and Proposals were made for the Masters to assist each other, and to get Goldsmiths Notes and other Effects to shew the Judges.

It has been objected, that the Managers did not call *Cottingham* and *Dixon*. We call'd the Masters. And if this Lord had no Concern in that Matter, he would certainly have call'd them;

and his not examining them to it, confirms our Evidence.

Your Lordships remember the many Inconsistencies, Evasions, Equivocations and Insufficiencies in his Lordship's Answer.

He makes a Distinction between an Answer to an Impeachment, and an Answer to a Bill; that the Plaintiff in a Cause had a Right to a full Discovery, but that the Case before your Lordships differs. There was an Impeachment, in which the Lord now impeach'd had a great Share in the Reply; wherein he laid great Strefs upon the Insufficiency and Evasions in the Answer. The Person then impeach'd had very hard Names given to him on that Account; and *even his Silence* was insisted on as a *Confession of his Crimes*.

As to the Noble Lord's Charities, it was the more extraordinary they should be now publish'd; because they are no Ways material. Here are plain Facts charg'd and prov'd: And if these Charities are to wipe off the Charge, it is a Commutation unheard of. He that would be charitable, should first be just.

There needs no Eloquence to aggravate the Crimes. I pretend to none. But the Cries of Widows and Orphans will have the most persuasive Eloquence: And when they have Justice on their Side, they will have Weight with your Lordships.

Serj. Peng. We shall call a Witness or two.

Mr. Rich. Lucas
examined.

Mr. Richard Lucas sworn.

Serj. Peng. Whether he made Application about coming into the Master's Office, and what?

Luc. On the Death of Mr. Fellowes, I went to Mr. Cottingham. He told me, *It was to no Purpose for him to recommend me to my Lord, unless I bid more than formerly I had done*. I told him I was ready to give 6000*l.* He intimated to me some Intention of my Lord Macclesfield to do somewhat for the Advantage of the Masters, but that he would not do it at that Time, because it would look as if he had an Intention of making an

Advantage by that Vacancy. A Day or two after, he told me, he had spoke to my Lord, and that his Lordship thought it proper that some Security should be given. I waited on him to know, what Security was expected? He mention'd 10000*l.* I told him, after I parted with 6000*l.* I could not say that I could myself make a Security of 10000*l.* but with the Assistance of Friends I possibly might. Talking with my Mother about it, she was willing to join in the Security. I wrote (either to my Lord, or to Mr. *Cottingham*) and Mr. *Cottingham* inform'd me, that my Lord had seen my Letter. But afterwards being uneasy at giving so large a Sum, and considering, from the Talk that then was, that these Matters might come into Parliament; I was advised, and thought it proper, to have some better Hold of his Lordship, to make some Return, in case any Thing should happen to lessen the Value of the Place. Upon that I wrote Page 276. a Letter, in Substance, that I would undertake to give the Security requir'd; and added, that notwithstanding the present Disputes, between the Master of the *Rolls* and the Masters, and the Talk of bringing it into Parliament, I was not uneasy; because I could depend upon his Lordship's Generosity, that he would take it into Consideration, in Case any Thing happen'd amiss in Parliament. My Lord has the Letter; and will set me right, if I'm mistaken. The next Thing I heard was, that Mr. *Elde* was in the Place.

Serj. *Peng.* Since you was disappointed when *Elde* came in; what pass'd when Mr. *Thurston* came in?

Luc. I was prevailed with to renew my Application: But with Abundance of Fear, about the bringing this Matter into Parliament, not knowing what Effect that might have upon the Profits. Upon that, my Brother told me, he was acquainted with Mr. *Ellis*, my Lord's Chaplain, and would desire him to speak to my Lord.

Serj. *Peng.* What Direction did you give your Brother, to offer any Thing?

Luc. I can't say whether he had a direct Commission to mention that I was ready to give 6000*l.* but it was all our Apprehension, that I should not come in under so much. I mention'd to my Brother to acquaint Mr. *Ellis*, that I had heard more of the Deficiencies in the several Offices, and apprehended, that I might be called upon for several Sums to make good past Deficiencies; and that I thought it would be unreasonable. 6000*l.* was the Sum to be given; and I desir'd my Brother to mention the Deficiencies, and that I should not be understood to be subject to any of them; for I would not be answerable for any of them.

And Mr. *Edward Lucas*.

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Mr. *Ellis* call'd.

Mr. Edward Lucas sworn and examin'd to the same Effect. But the Earl of Macclesfield moving that Mr. Ellis might be call'd, and that then Mr. Edw. Lucas might repeat his Evidence, he went on in Substance, following:

Edw. Luc. I saw Mr. *Ellis* at my Mother's, immediately after Mr. *Borret's* Death. I told him of my Brother's Intention. Mr. *Ellis* at first was not inclinable to concern himself in it; but said, out of Friendship to me he would go to my Lord, and bring me his Answer. The next Day he told me, my Lord had no Objection to my Brother; but another Person had been recommended: And that he apprehended, if the other did not succeed, my Brother might. Sometime afterwards, at my Lord's House, I went, by my Brother's Direction, to consult Mr. *Ellis*, whether to make his Lordship a direct Offer of 6000*l.* I said, if he gave it, it was reasonable he should be indemnified from any Damage, by Reason of the Deficiency in any of the Offices. He said, my Lord had not spoken to him about that; that he could not have every Opportunity to speak with him: That as to the Deficiencies, he had heard there was none: I said, I had heard so likewise: But whether there was or no, my Brother was willing to treat with my Lord upon these Terms.

Serj. Prob. When the first Proposal was made to Mr. *Ellis*, whether he did propose a certain Sum?

Edw. Luc.

Edw. Luc. I don't remember I did. I think I told him, my Brother had formerly offer'd 6000*l.* and I laid before him all the Circumstances of that Affair, to make him the more inclinable to engage in it.

Mr. Comm. Serj. Whether any Terms besides were mention'd?

Edw. Luc. I don't remember any other. I can't be positive; but that he was willing to leave it to my Lord's Honour and Generosity. And I am positive, that till the first Day of these Proceedings, when I met Mr. *Ellis*, I never knew that he had offer'd my Lord 6000*l.*

Earl of Maccl. We beg Mr. *Ellis* may give Account what Proposal he made me from Mr. *Lucas*?

Ellis: The Account given by Mr. *Lucas* is true in all the Particulars, only as to this one, his not impowering me to offer this 6000*l.* I should not have gone to my Lord, unless I had had some particular Offer to mention. I particularly remember, I made him that Offer; and I'm as certain, Mr. *Lucas* did speak to me to make the Offer of 6000*l.* for I never knew Mr. *Lucas* had offer'd 6000*l.* before by Mr. *Cottingham*, till this Impeachment began.

Mr. Ellis examin'd.

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Edw. Luc. I desire Mr. *Ellis* may be asked, whether ever he told me, that he offer'd Lord *Macclesfield* 6000*l.*

Ellis: I believe, I only told him in general, that I had made his Lordship the Offer he desir'd me to make; and that my Lord was satisfied.

Mr. Comm. Serj. Whether Mr. *Lucas* inquir'd what Offer he had made?

Ellis: No.

Serj. Peng. They have call'd Mr. *Ellis* to confront Mr. *Lucas*; but they agree in all the material Circumstances.

Edw. Luc. I don't positively swear, that I did not give him that Commission: But, to the best of my Remembrance, I did not.

Earl of Maccl. Whether Mr. *Ellis* mention'd any Condition, when he made the Proposal to me?

Ellis: No.

Edw. Luc. Till after the first Conversation with Mr. *Ellis*, I had no Direction from my Brother to mention any Price or Condition.

Earl of *Maccl.* When Mr. *Ellis* told him I was satisfied with the Proposal, what did he farther upon it?

Edw. Luc. Mr. *Ellis* did not tell me, that my Lord was *satisfied with the Proposal*, but that he had *no Objection to my Brother*.

Mr. *Plum.* How long before Mr. *Thurston* was admitted, was the Conversation about giving Security that Mr. *Lucas* might be indemnified?

Ellis: After I had spoken to my Lord, Mr. *Lucas* might say something about having Security. But I don't recollect it with any Certainty. If he did, it was some Days before Mr. *Thurston* was admitted.

Serj. *Prob.* Whether he ever told my Lord *Maclesfield* any Thing of this Discourse about Security?

Ellis: No.

Sir *Geo. Oxend.* If he told Lord *Parker*?

Ellis: I told Nobody at all.

Mr. *Strange:* A learned Manager observ'd upon the Appearance of these two Witnesses together, that Mr. *Lucas's* Evidence is confirm'd by Mr. *Ellis*. Mr. *Ellis* was our Witness, and was first examin'd; and therefore I should apprehend Mr. *Ellis's* Evidence rather confirm'd by Mr. *Lucas*.

Earl of *Maccl.* Whether the Objection did not relate singly to the Deficiencies?

Ellis: I don't well remember what pass'd upon the Subject of the Deficiencies.

Earl of *Maccl.* Mr. *Lucas* said to you, he was willing to treat upon those Terms?

Edw. Luc. I did say, *upon those Terms*, or to that Effect.

Mr. *Plum.* Both these Evidences confirm this, that Mr. *Lucas* was an inquisitive Man, and would not part with his 6000 *l.* so easily, as to ask no Questions.

Serj. *Peng.* Mr. *Cottingham* could not say the second Letter, or Order, suppos'd to be sent to all the

the Masters in Nov. 1721, was deliver'd. He had kept a *Memorandum* of the first; but none of that; and he believ'd he might say, it was deliver'd. We deny any such Letter was deliver'd.

Mr. *John Bennet* call'd.

Mr. *J. Bennet*
examin'd.

Serj. *Peng.* Whether, in Nov. 1721, any second Letter, or Order, of the Purport of the first, was deliver'd, in Relation to the Accounts.

Benn. I never saw any such Letter: Nor ever heard of it before I heard Mr. *Cottingham* read it at the Bar; nor ever receiv'd any Account from the other Masters, that they had.

Serj. *Peng.* Do you recollect any Discourse between Lord *Macclesfield* and your Brother, relating to your Brother's Accounts.

Benn. My Lord declar'd to me, that he wonder'd Mr. *Kynaston* and my Brother should put such an *Item* in their Accounts, which would make a Discovery, that the Masters had bought their Places with the Money of the Court; which might be of mischievous Consequence: That whenever it was objected to him, he had always taken great Pains to deny it.

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Serj. *Peng.* When was this?

Benn. About *Christmas* last.

Serj. *Prok.* This Evidence is very improper now; being not to support what was given before, but new Matter.

Mr. *Lutw.* We apprehend it very proper; because Mr. *Tho. Bennet* has been objected to, and this confirms his Evidence.

Mr. *Holford* called, and asked concerning the And Mr. *Holford*
second Letter before-mention'd, declar'd, he never heard of it till now lately.

Mr. *Comm. Serj.* Whether there were not then several Masters senior to him? And whether it is not usual to leave those Letters or Orders with the senior Masters?

Holf. I don't know that such Order or Letter was left. Mr. *Hiccocks* and Mr. *Fellowes* were Seniors to me. The Usage generally is to be left at the Publick Office. It might be left with the senior Master, for ought I know.

Mr. *Lovi-*

And Mr. Lovibond.

Mr. Lovibond call'd, and ask'd, concerning the same Letter, declar'd, he never heard of it till it was read at the Bar.

And Mr. Kynaston.

Mr. Kynaston call'd to the same, made the same Answer.

Mr. Lightboun and Mr. Edwards.

And so did Mr. Lightboun, and Mr. Edwards.

Serj. Peng. This will explain Mr. Cottingham's Want of Memory. We apprehend this Letter was a Pocket-Letter, to be made Use of on any proper Occasion. We have clear'd up the Reason why the Earl took 5000 *l.* rather than 6000 *l.* in Hopes of greater Gain in having 5000 *l.* absolutely, than 6000 *l.* liable to such a Contingency.

Serj. Prob. Their Evidence proves, what we insisted on, that Care was taken in disposing of these Offices; and that my Lord preferr'd one of whom he had personal Knowledge, before another whom he did not know, though he had less Money, than he could have had of the other. A Proposal was made of 6000 *l.* without any Terms whatsoever. His Lordship directing a proper Enquiry what Security he was able to give; and tho' here was 6000 *l.* propos'd without any Terms, he preferr'd another whom he knew well qualified for 5000 *l.* This does not shew any Neglect in the Earl, but all the Care and Caution that could be taken; and therefore is an Evidence much in Favour of the Earl. As to the Letter, *Cottingham* says, he wrote it by the Earl's Order, but can't now say to which of the Masters he deliver'd it; or whether it was deliver'd by himself or one of his Clerks. There were two Masters senior to Mr. *Holford*, viz. Mr. *Hiccocks* and Mr. *Fellowes*; and it might probably be deliver'd to one of them.

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Mr. Comm. Serj. There was one material Part of our Evidence, that the Earl had a thorough Intention of entring into the Regulation of those Matters. The Evidence of Mr. *Lucas* corroborates our Proof. This shews the Earl's Intention: And if the Thirst of Gain had sway'd him, Mr. *Lucas* would never have had those Bugbears to affright him from giving so much Money.

Earl

Earl of Maccl. Mr. *Ellis* has sworn positively, he mention'd no Terms or Conditions at all to me. So that there is no Pretence, that the Restriction, supposing any, ever came to my Knowledge. As to the Letter of Nov. 1721, when I spoke of that, I enter'd upon it as a Thing not at all necessary for me; because they had not prov'd the Article. In the Reply there hath been something new offer'd, to which I have had no Opportunity of giving an Answer before. These Acts of Parliament relate to Judges who take Bribes. That of *Magna Charta* is plainly so. So the Stat. 12 Rich. 2.

Serj. Peng. My Lord can't be regular to reply to us on that Statute.

Earl of Maccl. The Statute is, that they shall not make any Officer for *Brocage*.

Sir. G. Oxend. The Noble Earl hath had his Defence: We have replied; it is not regular for him to enter into a Debate now.

Earl of Maccl. I hope those Gentlemen will not oppose my taking Notice of one Thing that is new, tho' no Part of the Articles: Which is what they have said with Relation to *Wilson's* Composition not being binding upon the Suitors. If *Wilson* acted honestly, he would have the Benefit of it; but if not, it would not be conclusive upon the Suitors.

Serj. Peng. The Managers are entitled to the Page 28r. Reply and Conclusion.

If the Earl had no Notice of the Incumbrance upon the 6000 *l.* 'tis proved his Agent had: And we appeal to the Letter, which is in their Hands. And this is a Confirmation of the other Charge of Neglect when Security was offer'd.

Earl of Maccl. I would take Notice, that none of the Masters, that came in in my Time, appear to have paid for their Offices out of the Suitors Money, but *Kynaston* and *T. Bennet*; but none of them, or any other, pretend that I knew they did so. Because I told one of them afterwards, admitting what he said to be true, that I had heard it said it was so, and *denied it*; is it to be concluded, that I *knew* it was really so?

Serj.

Serj. *Peng.* We are unwilling to interrupt the Earl: But for him to go back again into the whole, is a greater Right than his Lordship is entitled to.

Earl of *Maccl.* The Gentlemen have thought the Arguments used by me in my Defence either such as they could not answer, or such as needed no Answer, since they have not attempted to answer any of them.

Mr. *Onsl.* In our Reply, we made Use of the Statute of *Hen. IV.* We have it not printed: But we have an attested Copy in Writing, and the Original Roll.

Mr. *Paxton*
proves the Copy of the Record of the Stat. of *H. IV.*

Mr. *Nich. Paxton* sworn.

Paxt. I examin'd this Copy with the Deputy-Keeper of the Rolls in the Tower; and it is a true Copy.

Earl of *Maccl.* Whether that Parliament-Roll be in the Nature of a Journal, or a Statute-Roll, wherein the Act of Parliament is enter'd?

Paxt. The Officer is here: He'll give an Account.

Mr. *Lutw.* 'Tis quoted by Lord *Coke* to be of the same Nature as a Parliament-Roll.

Mr. *Holmes*
proves the Parliament-Roll.

Mr. *Holmes* call'd.

Serj. *Peng.* Where is this Roll kept? And what Roll is it?

Holmes: In the *Tower.* 'Tis the Parliament-Roll in *Hen. IV.*

Earl of *Maccl.* Whether there is any Difference between the Parliament-Roll and the Statute-Roll?

The Difference
between the
Parliament-
Roll and the
Statute-Roll.

Holmes: Many private Acts are entred on the Parliament-Roll; that are not on the Statute-Rolls. What is in the Statute-Roll was sent down by Writ to be proclaim'd in the County-Courts.

Serj. *Peng.* Whether that is not the Original?

Holmes, This is the original Roll.

Earl of *Maccl.* The Parliament-Roll contains the Petitions and the King's Answer?

Holmes: It doth.

Earl of *Maccl.* Before it comes to be publish'd as a Law, is it not drawn up in Form, and enter'd upon the Statute-Roll?

Holmes:

Holmes : The Petition is a Piece of Parchment. After it hath pass'd 'tis entred on this Roll.

Mr. Onsl. Whether the King's Assent is not entred upon this Roll?

Holmes : There is *Le Roy le veut*.

Lord Lechm. I desire he may read what is upon the Parliament-Roll.

Mr. Holmes reads the Parliament-Roll N^o 28.

11 Hen. IV.

Earl of Maccl. Supposing this to be an Act of Page 282. Parliament, it relates to Cases where Judgments are given, or where the Parties have a Right; and not any way to my Case. When the Acts of this Parliament of 11 Hen. IV. came to be drawn up and promulgated, this having a *Respectuatur* enter'd upon it, was not enter'd upon the Statute-Roll, and so not publish'd.

Mr. Lutw. This Statute doth concern him. But as to what he saith, of the *Respectuatur*, 'tis taken Notice of in the third Institute: Where Lord Coke affirms, this is an Act of Parliament in Force, and upon the Parliament-Roll; and takes Notice, that the *Respectuatur* was in Fact done by the Prince, but without Authority; and that, notwithstanding such Respite, this Act is in full Force.

Mr. West : Supposing it to be an Act of Parliament, it extends to the Earl's Case. The Parliament-Roll was only a Voucher to the Statute-Roll. I could give many Instances, where that Voucher was not pursued: And that was the Reason of altering the Manner of passing Laws into the Method now used. This is Lord Chief Justice Hale's Account in one of the *Modern Reports*.

Mr. Plumm. The Earl hath principally insisted on two Things. 1. The taking a less Sum when a greater was offer'd: But the Commons have explain'd it. 2. The calling for the Masters Accounts, notwithstanding the 500*l.* a piece was paid in: But it doth not appear that any of the now Masters knew any Thing of it. If the Earl had been in Earnest, he would have had a Return of that Order.

*Then the Managers and Counsel withdrew,
and the House adjourn'd.*

Tues-

Eleventh Day. Tuesday, 25 May 1725. The ELEVENTH DAY.

The Lords being seated, the Parties plac'd, and Proclamations made as before,

L. C. J. King : Your Lordships, having heard the Evidence in this Case, have agreed upon a Question, severally to be put to your Lordships in the usual Order. The Question is, *Is Thomas Earl of Macclesfield guilty of High Crimes and Misdemeanours charg'd upon him by the Impeachment of the House of Commons, or not guilty, upon your Honour?*

The Earl voted
Guilty *nem.*
contradicente.

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Which Question was severally put to the Lords then present, (beginning with the Junior Baron as usual) *Viz.* Lords Walpole, Lechmere, Ducie, Onslow, Bathurst, Foley, Masham, Trevor, Montjoy, Hay, Gower, Herbert, Ashburnham, Waldegrave, Lynn, Cornwallis, Bruce, Brooke, Compton, Hunsdon, Clinton, Delawar, Percy, Abergavenny; Bishops of Exeter, Bristol, Chichester, St. Davids, Norwich, Carlisle, Bangor, Gloucester, Ely, Peterborough, Rochester, Oxford, St. Asaph, Winchester, Durham, London; Viscounts Torrington, Harcourt, Cobham, Tadcaster, Lonsdale, Hatton, Townshend, Say and Seal; Earls of Pomfret, Harborough, Cadogan, Sussex, Halifax, Bristol, Strafford, Ferrers, Ilay, Deloraine, Stair, Orkney, Selkirk, Findlater, Buchan, Rothes, Cholmondeley, Albemarle, Rockford, Scarborough, Abingdon, Yarmouth, Burlington, Carlisle, Scarsdale, Sunderland, Denbigh, Warwick, Northampton, Leicester, Lincoln, Pembroke; Marquess of Tweedale; Dukes of Chandos, Manchester, Wharton, Newcastle, Ancaster; L. G. Chamb. Roxburghe, Montross, Montagu, Grafton, L. Chamb. Greenwich; L. Stew. Devonshire, L. Presid. and the Archbishop of Canterbury: And they unanimously found him Guilty.

Then the Managers and Counsel withdrew, and the House adjourn'd.

Wed.

Wednesday, 26 May 1725. The TWELFTH DAY. *Twelfth Day.*

The Lords being sat, the Managers come, and the usual Proclamations made, the Lord Chief Justice King acquainted the Earl of Macclesfield, that the Lords had unanimously found him Guilty: After which the Earl spake, in Substance, as follows.

Earl of Maccl. I'm now to expect your Lordships Judgment: And I hope you will consider, that I have suffer'd no small Matter already in the Trial, the Expence, the Fatigue, and otherways; besides the cruel Distemper which this hath brought upon me. I have paid back 10800*l.* of the Money; I have lost my Office; I have undergone the Censure of both Houses. *Dormer's* Deficiency sounds large; but it was not through my Fault, nor was that Master put in by me: On the Contrary 'tis reduc'd, by my Means, to 10000*l.* less than otherwise it would have been. All the Loss that can be sustain'd, is only what some of the Suitors might have had more for their Proportion. His Debt came to about 47000*l.* and his Effects to about 13000*l.* which is about a fourth Part. I don't find that one Suitor has complain'd, that he hath not receiv'd his 5*s.* in the Pound. Mrs. *Chitty* has receiv'd her Share.

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Mr. *Onslow*: This was proper, when the Noble Lord was making his Defence; but not so in Arrest of Judgment. Your Lordships have found him *Guilty*, and he is arguing in *Defence* of it. I interrupt him now with great Reluctancy: But it is for the Regularity of your Lordships Proceedings.

Earl of Maccl. I submit, whether this be not proper in Mitigation of your Lordships Sentence. But I leave my self to your Lordships Justice and Mercy.

Then the Earl, and the Managers were directed to withdraw; and the House committed him to the Black-Rod: And then proceeded to consider of the Judgment. After which they adjourn'd.

The Earl committed to the Black-Rod.

Thurs.

Thirteenth Day. Thursday, 27 May 1725. The THIRTEENTH DAY.

*A Message sent to the Commons: Who attending, with their Speaker, Black-Rod brought the Earl to the Bar; where, after low Obeisances, he kneel'd, till the Lord Chief Justice King acquainted him he might rise: And then the Speaker demanding Judgment, it was pronounc'd by the Lord Chief Justice King; Viz. That the said Earl should be fin'd 30000*l.* to the King, and imprison'd in the Tower till he paid the same.*

Page 285. *The TRIAL of Sir ROBERT SPOTISWOOD for High Treason, in the Parliament held at St. Andrews in Scotland, Anno 21 Car. I. 1645.*

*Charge, or
Dittay.*

*Sir Robert unjustly purchas'd
the Office of
Secretary.*

SIR Robert Spotiswood, you are indicted and accused before the Committee of Estates of Parliament; that you having shaken off all Fear of God, and due Respect to the Laws of the Kingdom, and all Duty that as a Subject thereof you ought to have carry'd to this Kingdom, and to the Defence thereof; you have presumed and taken upon you to abuse the King, in purchasing from his Majesty by your pretended Ways, the Office of Secretary to your self, and have received the Signet thereof, contrary to his Majesty's Declaration to the said Parliament, that he would not employ you in any Office or Place without Consent of Parliament.

And since your Purchasing of the said Office of Secretary, you have signeted with the Signet of the said Office, several Commissions granted to James Graham, sometime Earl of Montrose, a declared Traitor; and especially a Commission dated the 5th of June 1645, given by the King's Majesty

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Majesty to the said *James Graham*, making and constituting him Captain General of all the Forces rais'd within this Kingdom, and giving him Power to raise and levy Forces, and to lead and conduct them against the King's good Subjects; and the Forces rais'd and levied in Arms by Authority of the Estates of Parliament, for Maintenance of the mutual League and Covenant: And also you have signed with your Hand, a Proclamation by the King's Majesty for holding of Parliaments within this Kingdom, which is destructive of the Authority of the Estates of Parliament now convened, and annuls and condemns the Procedure thereof: And likewise you have signed a Commission granted by the King's Majesty to the aforesaid *James Graham*, to be Commissioner for his Majesty for holding of a pretended Parliament; in signing of which Commissions and Proclamation, you have abused the aforesaid Office of Secretary, to the Diminution of the Honour, Dignity and Authority of the Estates of Parliament.

Signed Commissions to Lord *Montrose* to raise and levy Forces, &c.

Likewise you have actually join'd your self in an unnatural and traiterous Way against this Kingdom, with the said *James Graham* and his rebellious Army, wherewith he infested and troubled the Peace of the Kingdom, and cruelly murdered the King's Majesty's loyal Subjects; and especially you was with him and his Army, in his Progress going thro' the Country in subduing the same, from *Kilsyth* to *Bothwel*, &c. in the Months of *August* and *September* last 1645, for which Crimes above specified, you as a Traitor to this Kingdom have incurred the Pain of High Treason against the Estates of the Kingdom, and Forfeiture of Life, Lands and Estate.

And joined him and his Army, against the Kingdom.

Whereby guilty of Treason against the Estates.

Ja. Prymrose.

In Answer to the Dittay or Charge, as to the purchasing of the Secretary's Office, the Truth is, that the Lord Secretary the Earl of *Lanerk* being from Court at the Time, and there being sundry Solicitors to his Majesty for Grants of divers Natures, he was pleased to intrust me with the sign-

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Answer, of Sir *Rob. Spotswood.*

That he was appointed by the King in Absence of the Secretary.

And signed the Commissions by his Majesty's Command.

Page 288.
Gave no bad Council, but did his Duty.

Nor did take up Arms, being sent by the King to *Montrose*.

ing and presenting the same, by sending me a Warrant to that Effect: In accepting whereof, I did not commit any Thing worthy of Blame; nor did his Majesty any Thing contrary to his Declaration, he having conferred no ordinary Place or Office upon me, but only a Temporary Employment *in casu necessitatis*, having none else for the Time to lay it upon.

As for signing Commissions presented by me, I hope it is no Crime, altho' I was not actually Secretary, I having done it by his Majesty's express Command: And the first Commission signed by me to *James Graham*, sometime Earl of *Montrose*, is but a Double, the Principal having been sent long before by the *English* Secretary, who was the sole Mover of it. Next, the Proclamation for holding a Parliament, was drawn by his Majesty's Special Direction, and signed by me; and his Majesty's Intention in it being only this, to have it come to his Hand to whom it was intrusted, who by Special Order was to dispose of it, as should be found best for the Peace of the Kingdom, without Derogation to the standing Laws thereof; neither hath there any Use at all been made of it: And I had no farther Hand in it, but in so far as I was obedient to my Master's Directions; which cannot bring me within the Compass of the least Censure, for I am not here called in Question for giving of bad Counsel to my Prince, but only for signing the Warrants, which I could not in Duty refuse, being commanded by his Majesty. To the Third and last Commission I make the same Answer.

Then for Answer to that Part of the Charge, that I took up Arms against the Kingdom; it is only alledged that I was in Company with *James Graham* in his Progress thro' the Country, which by no Interpretation can be thought to be a taking up of Arms against the Kingdom, especially since I was directed to him from his Majesty. And to close all, I am not charged with any Thing that is declared by any Law or Act of Parliament to be

Treason,

Treason, which by the 28th Act 1641, is required, before any Person can be a Traitor.

Where in the Defence, the Defender affirms that he committed nothing worthy of Blame, in taking upon him the Secretary's Office, because he was bound to obey the King's Majesty: It is replied, that since the Parliament 1641, the Secretary's Office, and all the Officers of State are to be provided and filled by Advice and Approbation of the Estates of Parliament; and it was a high Presumption in the Defender, to accept of the said Office without such Advice and Approbation; for he ought modestly to have refused the said Office, and not embraced the same, and used it to the Dishonour of the Estates of the Parliament of this Kingdom.

Replies, to Sir Robert's Answer.

Accepting the Office without Approbation of the Estates, a high Crime.

The said Defence, that the Defender cannot be challenged for signing the three Papers mentioned in his Dittay or Charge, he having done the same by his Majesty's Special Command, and he not being accused of giving Council to the same: To this it is reply'd, that the Defender's docqueting thereof, shews his Accession to the Evil Council given to his Majesty for granting the said Commissions and Proclamation, and also is a Part of the prosecuting that Evil Council, and of its desired Effect; which it was the Part of every true Subject to have diverted his Majesty from giving Ear to. So that this Defence ought to be repell'd, in respect of his accepting the Office of Secretary contrary to Act of Parliament; and his abusing of the same Office by signing Commissions and Proclamations destructive of, and derogatory to the Dignity and Authority of the Parliament.

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Signing the Commissions an acceding to the Evil Council.

To that Part of the Defence, bearing that the Defender's being in Company with *James Graham*, in his Progress thro' the Country after the Field of *Kilsyth*, cannot be interpreted the taking up of Arms against the Country, he being sent by his Majesty: It is replied, that the Defender did join himself with *James Graham*, and his rebellious Army, and was with him and his Army at the Places Libelled; which joining of the De-

And joining Rebels in Arms, a taking up of Arms.

fender with the Rebels, who were in Arms against the Country, is a taking up Arms against the Country.

And where the Defender affirms, that he is not charged with any Thing that is declared to be Treason by any Law, or Act of Parliament, except upon the Act of Parliament 1644, it ought to be repelled, in respect of the Dittay, which is also founded upon the Act of Parliament 1584. By which it is ordained, that none of the King's Subjects presume to impugn the Dignity and Authority of the Estates of Parliament, under the Pain of Treason.

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Duplies, of Sir Robert Spotiswood.

The accepting of the Office, not Treason, by any Law.

But he only supply'd it for a Time.

To this it is duplied, that altho' I had accepted the Office of Secretary, without the Advice and Approbation of the Parliament, which is denied, my accepting thereof could not import a contravening of the said Act 1584, and a Treasonable impugning of the Authority of the Estates; because the contravening of an Act of Parliament, or the accepting of an Office not conformable thereto, is not a direct impugning of the Authority of the Estates of Parliament, but a null Act: And otherwise Treason would be too frequent, in regard the Contraveners of any Act of Parliament might be thought to impugn the Authority of the Estates. And where it is reply'd, that it was a Presumption in me to accept the said Office, being fill'd by the Advice of Parliament: It is answered, that all Presumption is not Treason, and the Act of Parliament for providing these Places by Advice of the Estates, does not say, that if they should be provided otherwise, the Accepters should be punish'd as Traitors.

But the doing of Acts incumbent to the Secretary, doth not import the accepting of the Office; seeing it cannot be denied, but either in the necessary Absence of a Secretary, or in Time of Sicknes, or in the Vacancy before his Majesty would acquaint or have the Advice and Approbation of the Parliament, his Majesty may command any of his Subjects to supply the Place.

And

And whereas it is reply'd, that my signing the Papers mention'd in the Dittay, shews that I gave ill Counsel in granting the said Commissions and Proclamation, and is a Part of prosecuting that Council, and that as a good Subject I should have diverted his Majesty: It is duply'd, that all those who are imployed to docquet or sign Papers, are not admitted to be of his Council, and cannot in good Manners intrude themselves to divert his Majesty from his Resolutions, upon Pretext that they in their Judgment disprove them.

Those who sign Papers, are not of the Council.

Further it being replied, that I did join myself with *James Graham*, and was with him in his Army; an occasional being in an Army, cannot import a joining with it, and taking of Arms: And altho' I have granted, that I was taken Prisoner, being occasionally in the Army and there sent, I was not in the Army of Purpose to join with the said *James Graham* in taking of Arms against the Country.

Was not in the Army on purpose to take Arms.

And now being brought to answer a Dittay, founded upon a late Act of Parliament made in the Time of unhappy Combuſtions, when I was out of the Kingdom, I have reason to regrave my hard Fortune, having faithfully adhered to his Majesty, and following the Light of my Judgment, out of Confidence that I was not transgressing any known Law.

I may surely without Offence remonstrate how hard my Condition is, being put to answer a Charge, having no other Warrant in Law but the late Act, not made and enacted as all other former Statutes by his Majesty and the Estates join'd together, and making *communem Reipublicæ sponſionem*, which is the ordinary Definition of Laws; but during a Division between his Majesty and his Subjects, being in Arms, as they both profess, for maintaining of their Rights and Privileges.

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Charge founded on an Act, not made as other Laws.

When such fatal Questions do fall out, and Necessity involves all Men to side with one of them, and Men are left to their own Judgments, without the clear Direction of positive Laws, determining

In these Cases
should have
Privilege of
Laws of War.

Further Re-
plies to Sir Ro-
bert's Defence.

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No Promise to
be made good
to Traitors in
Arms.

Or the Laws
vacuated by
any one's Pro-
tection.

expressly what the Carriage of private Men should be; it hath ever been thought excusable, that they should follow the Light of their own Consciences and Judgments, albeit mistaken and erroneous: And therefore should enjoy the Privileges of the Law of War and Nations, whereof one of the Principal is, that they should not be judged by the Laws of those against whom they have sided, especially such as are made during the Dispute, but by the preceding Laws.

The Question here is not of any Man taken *in Bello*; but is anent the punishing of those who have taken Arms in a treacherous unnatural Way against their own native Country, and join'd themselves with a Traitor, risen in Insurrection within the Kingdom; who not only has taken Arms against the Estates, and the Liberties of the Nation, but also against the Religion presently profess'd, and the mutual League and Covenant establish'd by Parliament.

The Defender is accused for rising in Arms, and joining with *James Graham*, a declared Traitor and Enemy to this Kingdom: And there is none who will think, that if any of his Adherents, Counsellors; or those who are joined with him in Arms, being delivered into the Hands of the Estates of the Kingdom, should alledge for their Defence, that when they were taken, their Takers promised to save their Lives, or their Fortunes; that this should free the Delinquent, unless it be thought in the Power of any private Man in the Army, to pardon the greatest Offenders against the Estates.

There cannot be any Impunity promised in the Field to a Delinquent, by any private Persons whatsoever, in Prejudice of the solemn League and Covenant, and Defence and Maintenance thereof: But those who have risen in Arms against the Estates of this Kingdom, as they are punishable by the Laws of the Kingdom, so these Laws cannot be vacuated and made of no Effect by any Man's Protection or Promise.

The Estates of Parliament are to proceed and judge before God, that all Means may be essay'd to divert his Wrath from this Nation: And the Tye of the Covenant is no small Tye, for punishing the Enemies of Religion, and those who have risen in Arms against the Estates of the Kingdom; for it is a Bond tying the Estates of Parliament to the Prosecution of Delinquents to their condign Punishment.

And if Quarters to Prisoners were to be sustained within this Kingdom, yet none could be granted to the Defender; he being by the Propositions of Peace, ratified in both the Parliaments of Scotland and England, put amongst the Number of those who should expect no Pardon.

Quarters not to be allow'd Prisoners, in this War.

It is duply'd, that by the Law of War and Nations, those who are taken in the Field, by whomsoever, have the Right and Benefit of Quarters; neither are they obliged to take Notice of the Name and Quality of those who take them, tho' it was my good Fortune to be taken by an Officer belonging to a Nobleman of great Honour and Eminence, both in the State and the Army; and I am confident that the unquestionable Law of Arms will not be violated in me, who am Prisoner of such a Man.

Further Duplies, by Sir Robert Spotswood.

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As to Promises by the Takers of Captives; it is answer'd, that on these Occasions, when Men are so much taken up with Action, they have not Leisure to make, nor do they use to stand upon Promises and Capitulations; and the granting of Quarters, without any other Expression or Condition, is as binding by the Law of Arms, and secureth as much the Receiver's Life, as if there were a formal Instrument upon it.

The Nature of granting Quarters by Law of War.

Where it is reply'd, that whatsoever hath been the Custom, Quarters cannot free me, because I was not taken *in Bello*, but in a treacherous Way against my Country, and have joined my self with a declared Traitor: In Answer to this I do adhere to the Common Law of Nations and War, which hath Force every where; and is not limited to the Case of a National and Foreign War, but hath

The Laws of War extend to all Wars foreign and intestine.

Place in all Wars whether Foreign or Intestine: For War is *Publicorum armorum contentio*, upon some probable Grounds and Motives, which agreeth to Civil Wars and Distractions, as well as foreign; so that the Benefit of Quarters cannot be deny'd in Civil Wars no more than in Foreign.

Difference between Civil War and an Insurrection.

And I can't conceive, that I can be said to be taken in an Insurrection as the Reply says, and not in War; because Insurrection is properly when in Time of happy Peace and Harmony betwixt a Prince and the collective Body of his People, private and factious Men for their own Ends and Designs rise in Arms: But when there is a Division between the King and his People, it cannot be said that he or his Adherents, who upon probable (tho' possibly erroneous) Grounds, follow their own Judgment, are an Insurrection; for where a Sovereign Prince is in Terms of Difference with his People, none being to interpose themselves to be Judges of so high Differences, both Sides conceive they are necessitated to take Arms.

This a Civil War, and admits *Jura Belli*.

If the Prince give Commission and Command to any of his Subjects, who are of the same Opinion with himself, to make a Diversion; whether or not are those who are taken upon that Side, to be taken *in Bello*, or in an Insurrection? The Question being so stated, it is evident that such a War by the Law and Practice of all Nations, admitteth and challengeth the Privileges and *Jura Belli*, whereof that of Quarters is a main one. Nor can this War be thought to be of another Nature than that in *England*, where Quarters are neither deny'd nor violated.

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And whereas the Inconvenience is represented and aggravated, if it should be in the Power of private Men to pardon the greatest Offenders: Now it is answer'd, that the Question is not of granting an absolute Pardon, which is not craved by Quarters, but a securing the Life of those who are taken: And if the Defence of Quarters should not be sustain'd, the repelling of it will open a great Door to all Manner of Cruelty.

Where

Where it is further reply'd, that if Quarters be allow'd, the whole Nation, and especially the Estates of Parliament, will violate the Oath and Tye of the Covenant; and that there cannot be any Impunity granted to Delinquents by any private Man. It is duplied, that tho' the Oaths of Covenant and Parliament oblige the Takers of them to discover Malignants, that they may be brought to Trial, they do not prejudice those who are called in Question of their lawful Defences, competent to them by the Laws of Nations: Nor do they oblige the Judges to repel such Defences; and the Practice of the Estates in some particular Cases evinceth, that they do not think themselves so strictly limited by the said Oaths, for they have before this condescended to the exchanging of divers Prisoners, and have dismiss'd others who were in the like Condition with me.

Tye of the Covenant takes not away lawful Defences.

By-Laws of Nations.

It were absur'd and injurious to charge upon the Estates Perjury and Violation of their Oaths, because of these Practices, being founded upon the Law of Nations and good Considerations: And the Thing insisted on is Quarters granted by the Laws of War and Nations; not Impunity by any private Man in the Field.

Besides, it may be evinced from divers Places of Scripture, what Moderation was used in Times of Civil Distraction, and that those who had been active and leading on the other Side, were not only spared but advanced: Witness the Civil War betwixt the *Israelites* and *Benjamites*; in which, tho' the Cause was most unjust on the Part of the *Benjamites*, and they had mightily provoked the rest of the Tribes, by two great Overthrows they had given them; yet after the *Israelites* had got the better of them, their Revenge went no further, than to kill such as they could overtake in the Battel: But as for them that escaped to the Rock *Rimmon* they called peaceably to them, and notwithstanding their Oath, provided Wives for them, and made up again the Breach of that Tribe.

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Giving Quarter agreeable to Scripture.

Abner and his Men had fair Quarters from *Joab*, though in flying he had killed *Asabel*; And *Amasa*, Captain of *Absalom's* rebellious Host, was received into Favour, and made Captain over *Judah*: These and many other Places, clearly evince that the Scripture is of our Side.

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Quarters secures Life, not a Pardon, and how when excepted.

And whereas it is reply'd, That Quarters could not be granted to me, because I am excepted in the Propositions of Peace, and declared to be such a Person as could expect no Pardon: It is answered, That the Question is not of Pardon, but of Quarters already granted for securing my Life: And the said Propositions of Peace, are not a positive Declaration of my Incapacity and Exception in case of a happy Peace; but only contain the Desires of the Estates made to his Majesty, which may be altered upon a mutual condescending betwixt his Majesty and them, before they be settled by an Act of Pacification.

And the said Exception is only to take Effect against such as should be processed and condemned, and therefore it is to be understood without Prejudice of their lawful Defences; for by no Act of Parliament, nor by the aforesaid Propositions, it is declared, that those who are excepted should be incapable of Quarters, and of the Benefit of the Law of Nations.

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Report, of the Committee for the Estates.

Names of the Commissioners, and Procurators.

The Lords and other Commissioners for managing the Process in the Parliament against *Sir Robert Spotiswood*, appointed by the Estates, were *William Earl Marishal*, *William Earl of Glencairn*, *John Earl of Cassils*, *John Earl of Weymes*, *Robert Lord Burghly*, *James Lord Coupar*, *Sir Archibald Johnston*, *Sir William Cochran*, *Mr. George Dundas*, *Sir Thomas Ruthven*, *Sir John Weymes*, *Mr. James Mackdougall*, *Mr. John Kennedy*, *Mr. George Gairden*, *Mr. Robert Cunningham*, *Mr. Robert Barclay*, *Mr. William Glandinning*, *Mr. James Campbell*, and *Mr. Alexander Colvil*, &c. And the Procurators for the Estates of the Kingdom, *Mr. Roger Mowat*, *Mr. James Baird*, and *Mr. Thomas Nicholson*.

The said Procurators for the said Estates, appearing personally, for instructing the Points of the Dittay given in to Sir Robert Spotiswood, produced the aforesaid Commission granted by the King's Majesty to James Graham, making and constituting him Lieutenant Governor and Captain General of all the Forces raised or to be raised within this Kingdom; and giving him Power and Authority to raise and levy Forces, and to lead and conduct them against the Forces raised and levied by Authority of the Estates of Parliament, of the same Date, Tenor and Contents aforesaid, signed and subscribed by the said Sir Robert. And likewise produced the aforesaid Proclamation for holding of Parliaments within this Kingdom; together with the said Commission granted by his Majesty to the said James Graham to be Commissioner for his Majesty for holding of the said Parliament, as the same of the Tenor and Contents aforesaid, docquetted and subscribed by the said Sir Robert, at more Length bears.

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Commissions to Montrose produced, signed by Sir Robert.

And the said Sir Rob. Spotiswood, Defender, Compearand personally, and acknowledged judicially the Signing of the aforesaid first Commission; and the Docquetting and Subscribing of the aforesaid Proclamation, and second Commission to the said James Graham for holding of the Parliament; whereupon the said Procurators of Estates asked Instruments and Process against the said Sir Robert Spotiswood.

The Signing acknowledged.

Thereafter the Rights, Reasons and Allegations, with the Replies and Duplies given in by the said Parties, and other Probation deduced, being at length heard and considered by the said Commissioners, and they being therewith ripely advised; the said Commissioners, according to the Power and Authority given to them by the said Estates of Parliament, make their Report as follows, viz. They find the said Dittay or Charge founded upon the Act of Parliament 1584, relevant to infer against the Defender any arbitrary Censure or Punishment the Estates of Parliament shall think expedient; and the like as founded on

Committee report the Dittay or Charge made good.

on the Act of Parliament 1644, anent the Taking up of Arms against the Kingdom and Estates of the Counrry, notwithstanding the Defences and Duplies proponed on the Part of the said *Robert* to the contrary: And they repel the Defence founded upon Quarters proponed by him.

The Facts sufficiently prov'd against the Offender.

And they find that Member of the Assumption of the said Dittay, charging that Sir *Robert* has subscribed with his Hand, and signetted with the Signet of the Office of Secretary, the aforesaid Commission granted to *James Graham* for raising and levying of Forces within this Kingdom, and leading and commanding them against the Forces raised and levied by Authority of the Estates of Parliament; and bearing that the said Sir *Robert Spotiswood* has docketted and subscribed with his Hand the foresaid Commission granted by his Majesty to the said *James Graham* to be his Majesty's Commissioner for holding the said pretended Parliament, sufficiently proved against the said Sir *Robert*, to infer any Censure or Punishment the foresaid Estates of Parliament shall think fit.

His joining the Army of Rebels against the Kingdom.

And they also find, that the said Sir *Robert* has joined himself with the said *James Graham* and his Rebellious Army, and his being with him at Acts of Hostility committed by him in the Month of *September* last, being taken in Battle with his Sword drawn in his Hand; and so having taken up Arms against the Kingdom and Estates of the Country, proved against him, to infer the Pain and Punishment of Treason; and therefore he is punishable by Forfeiture of Life, Lands and Goods, or any other Censure the Parliament shall inflict.

Incurring Pains of Treason.

Cassils J. P. D. Com.

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Condemnation of Sir *Robert* by the Parliament.

This Report produced by the Commissioners for the Process, being read, heard, considered and advised by the Estates of Parliament; They approve of the same, and find and declare that the said Sir *Robert Spotiswood* has incurred the Capital Punishment of Death, in respect the Dittay founded upon the Act of Parliament 1584, is found relevant

relevant and proven against him ; And also find and declare, that the said Sir *Robert Spotiswood* has incurred the Pain and Punishment of Treason, and Forfeiture of Lands and Goods, in Regard the Dittay founded on the Act 1644, is also found relevant against him by the Report above specified.

And therefore the Estates declare him a Traitor to this Kingdom and the Estates thereof, and forfeit him in Life, Lands and Goods, to be applied to the Use of the Publick ; and do ordain his Arms to be delete out of the Book of Arms, and himself to be executed, by striking off his Head from his Shoulders, at the Market-Cross of *St. Andrews*, upon *Tuesday* next the 20th Day of *January* instant, at Twelve o' Clock that Day, and order the Magistrates of *St. Andrews* to see the same done.

He is declared a Traitor, and order'd to be executed.

In pronouncing the Sentence of Condemnation, there was much Division ; and after it was read, some of the Nobility spoke in Sir *Robert's* Behalf, and intreated the House to consider the Quality and Parts of that excellent Gentleman, and most just Judge, whom they had condemned, and begged earnestly that his Life might be spared : But an eminent Knowledge and Esteem, which in other Cases might be a Motive to save a Criminal, was one Cause of taking away his Life ; for those Gentlemen, who spoke, were told, That the Authority of the then established Government was not secure, while Sir *Robert Spotiswood* was alive.

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Great Division in giving Sentence.

Lords desire his Life may be spared.

Whereupon those Noblemen who presided in the Meeting of the Estates at *Glasgow*, and in the Parliament at *St. Andrews*, when they signed the respective Sentences, openly declared to the rest of the Members, That they did sign as Preses and in Obedience to the Command of the Estates, but not as their particular Judgment.

Sentence sign'd against their Judgments.

The Day of Sir *Robert Spotiswood's* Execution being come, the People were surprized with Astonishment, when they saw appear upon the Scaffold, a Person whom in former Time they had with

Sir Robert's Behaviour at the Place of Execution.

He's interrupt-
ed in speaking.

His intended
Speech to vindi-
cate his Maje-
sty and himself.

Treas against
the Estates un-
heard of before.

Signing the
Commissions
to Montrose
justified.

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with Love and Admiration seen preside in the supreme Judicature of the Kingdom, with great Sufficiency and much Honour; he having been many Years President of the College of Justice in *Scotland*. He appear'd with the same Gravity and Majesty which did ever shine in his Countenance; and as he was going to speak to the People, a Minister of the Place caused the Provost to impose Silence on him: But Sir *Robert* foreseeing this Treatment, threw among the Multitude what he had proposed to speak put in Writing.

The Substance of the Paper containing his intended Speech, was as follows: 'That the People would expect something from him of the Cause for which he was brought thither at that Time to suffer in that Kind; which he was bound to do for Clearing the Integrity of his own Proceedings, Vindicating his Majesty's just and pious Intentions, and withal to Vindicate them who were misled in Ignorance, and made to believe that they were tied in Conscience to set forward this unnatural Rebellion, masked under the Covert of propagating Religion, and maintaining the Publick Liberties: That they perceived he stood there adjudged to die, as a Traitor to the Estates of Parliament; for a Treason unheard of before against the Estates, and a Thing of late Creation, which he believed some would erect in Opposition to the just Authority of the King.

'That as to his Treasonable Demeanor, (as it was esteem'd) the main one was, that he did docquet and bring down a Commission of Lieutenancy from his Majesty to the Lord Marquis of *Montrose*; with a Proclamation for holding a Parliament by the King's Authority, wherein the said Lord was to be Commissioner; and he held it just and necessary for his Majesty to grant such Commissions, and by Consequence an Act of Duty in him, to perform what he commanded. That when the Rebellion broke forth in *England*, his Majesty being reduc'd to great Extremity, he could find no Expedient so fair
' and

and easy, as to make Use of the Help of such of his Subjects as he knew had Disloyalty in Horror and Detestation; among whom that matchless Mirror of all true Worth and Nobility, the Lord *Montrose*, having offer'd himself, it pleas'd his Majesty to give him a subaltern Commission at first; which he having executed with such unheard of Success, that his Memory would be honoured in all Ages; his Majesty for the better furthering his own Service and to encourage him, gave him an absolute one thereafter.

Character of
Montrose.

That his Majesty pitying the Misery of this poor Kingdom, thought fit to give Power to the Lord Marquis to call a Parliament in his Majesty's Name, to try if by that Means a Remedy might be found out against the then present Evils, stirred up by a Faction, who for their own Ends had dishonour'd their Native Kingdom, and disturb'd the Peace thereof; and to have all his Subjects reduced by one Means or other under his Obedience: In all which, he did not see that any Thing could be justly charged upon his Majesty, or upon him as his Servant; who had done nothing against any authorized Law of the Kingdom, but had served him faithfully, unto whom by Trust and natural Allegiance he was so much bound.

To bring his Majesty's factious Subjects under Obedience.

That whereas he was declared an Enemy to his Native Country, he hoped God would be so propitious to him, as his Thoughts and Actions towards it had been always publick, and tending to the Good and Honour thereof: And he was content to be accounted a Traitor, in their Opinion who had condemned him, being fully assured that God, the Righteous Judge of all, who knew the Uprightness and Integrity of his Intentions, would impute no Fault to him in this Kind. He exhorted the People to break off their Sins by Repentance, and above all to free themselves of this master Sin of Rebellion that reigned in the Land; whereunto most were either forced or drawn unawares, chiefly at the

No Enemy to his Country, or Traitor before God.

Exhortation to the People.

Insti-

His Character
of K. Charles I.

‘ Instigation of those who should direct them in
‘ the Way of Truth.

‘ That it could not but be a great Judgment
‘ upon the Nation, when God’s singular Mercies
‘ towards it were so little valued: He had not gi-
‘ ven them a King in his Wrath, but one for Pie-
‘ ty, Bounty, and all Virtues both Christian and
‘ Moral, might be a Pattern to all Princes besides:
‘ Though how thankful they were to God for so
‘ great a Blessing, their Respect towards him ma-
‘ nifested. He beseeched God Almighty to re-
‘ lieve them from the intolerable Servitude they
‘ lay under; and beg’d the Assistance of their
‘ Prayers, that God would pardon all his Sins in
‘ Jesus Christ: And so he bid the World and
‘ them farewell.

His great Aver-
sion to Fanc-
ricks and their
Abominations.

The Interruption which Sir *Robert* met with in
addressing himself to the People, did not disturb
him; for turning from them, he wholly bestowed
himself in Devotions and Prayers to Almighty God.
He told the same Minister he did not desire his
Prayers, which he believed were abominable unto
God; for of all the Plagues with which the of-
fended Divine Majesty had scourged this Nation,
this was much the greatest (greater than the
Sword, Fire or Pestilence) that for the Sins of the
People God had sent *a lying Spirit into the Mouths
of the Prophets.*

His Christian
Courage and
Resolution.

At last, with an undaunted Air, he advanced
towards the Instrument of his Execution, and
shewing no Alteration in Voice or Countenance,
he laid down his Neck to the fatal Stroke, and
uttered these his last Words:

And last
Words.

*Merciful Jesus, gather my Soul unto thy Saints
and Martyrs, who have run before me in this
Race.*

After these Trials in the two additional Vo-
lumes in Folio, follows

A N
APPENDIX.

CContaining several Records relating to the Trials and Proceedings inserted in the Six Volumes in Folio : But as Records are of no Value, unless printed at full Length, which not being the Design of this Work, we have thought fit to give a List of the several Records inserted in the said Folio Edition, That those People who may have Occasion for Precedents, may more readily turn there-to, *viz.*

T H E
C O N T E N T S
O F T H E
R E C O R D S.

T H E <i>Writ De Hæretico comburendo, for burning William Sawtree, convicted of Heresy in Convocation</i>	Page 2
<i>The Form of the Warrant to the Lord Chancellor for issuing the Writ De Hæretico combu- rendo, against Bartholomew Legatt, on a Conviction for Heresy before the Ordinary</i>	ibid.
<i>The Writ De Hæretico comburendo</i>	3
<i>The same in English</i>	ibid.
<i>The forged Indictment and Outlawry of Sir John Oldcastle Lord Cobham, for High Treason</i>	4
<i>Rex versus Dominum Audley, for a Rape</i>	ibid.
<i>Rex versus eundem, for Sodomy</i>	5
<i>Rex versus Johannem Hampden, in the Case of Ship Money</i>	ibid.
	A Copy

<i>A Copy of the Judgment against Mr. Hampden, as it is entred upon Record</i>	Page 9
<i>Rex versus Harrison, for a Misdemeanour</i>	10
<i>Rex versus Crook & alios, for not taking the Oaths</i>	11
<i>Rex versus Green, Hill, and others, for the Murder of Sir Edmundbury Godfrey</i>	12
<i>Rex versus Tarborough and Price, for Subor- nation of Perjury</i>	ibid.
<i>Rex versus Smith, for a Libel</i>	13
<i>Rex versus Collier for a Libel</i>	14
<i>Rex versus Dominum Grey & al', for a Mis- demeanour in debauching the Lady Henrietta Berkley</i>	16
<i>Rex versus Major' & Commun' & Civ' Civi- tatis Londini, in an Information in Nature of a Quo Warranto</i>	ibid.
<i>Rex versus Pilkington, & al', for a Riot</i>	40
<i>Rex versus Walcot, for High Treason</i>	42
<i>Rex versus Sidney, for High Treason</i>	45
<i>Rex versus Hampden, for a Misdemeanour</i>	ibid.
<i>Rex versus Bradden and Speke, for a Mis- demeanour</i>	46
<i>Rex versus Barnardiston, for the same</i>	ibid.
<i>Rex versus Rosewel, for High Treason</i>	48
<i>Rex versus Hayes, for the same</i>	50
<i>Pritchard versus Papillon, an Action for false Imprisonment</i>	ibid.
<i>Rex versus Hampden, for High Treason</i>	51
<i>Rex versus Dominum Delamere</i>	55
<i>Rex versus Dominum Mohun, for the Murder of W. Mountfort</i>	56
<i>Rex versus Charnock, for High Treason</i>	ibid.
<i>Rex versus Cranburn, Lowick, & al', for the same</i>	ibid.
<i>Rex versus Vaughan, for High Treason</i>	57
	Rex

Rex <i>versus</i> Com' Warwick & Dominum Mohun, for the Murder of R. Coote	Page 58
Regina <i>versus</i> Fuller, for a Cheat	ibid.
Regina <i>versus</i> Hathaway, for a Cheat	59
Regina <i>versus</i> eundem, for an Assault	ibid.
Regina <i>versus</i> Bouchier, for High Treason	60
Regina <i>versus</i> Lindsay, for the same	ibid.
Rex <i>versus</i> Coke and Woodburne, for <i>slitting the Nose of Edward Crispe</i>	ibid.

F I N I S.



Tryals for high-treason, and other crimes with proceedings on bills of attainder, and impeachments, for three hundred years past, to which are prefix'd a preface, giving an account of the nature and usefulness of the work and an alphabetical table of the respective persons try'd, and the
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